



Submission from the Association of Independent Schools of NSW

2020 Review of the Disability Standards for Education 2005

September 2020

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Introduction

About the independent school sector in NSW

The Association of Independent Schools of New South Wales (AISNSW), as the peak body representing the independent school sector in New South Wales, welcomes the opportunity to contribute to the 2020 Review of the Disability Standards for Education 2005.

The NSW independent school sector is vibrant and diverse, providing the community with choice in education. The independent school sector in NSW has nearly 500 schools and campuses, educating 209,000 students and accounting for 17% of total NSW school enrolments.

Many independent schools provide a religious or values-based education. Others promote a particular educational philosophy or educate specific cohorts of students such as those with disabilities. Independent schools include:

- Schools with religious beliefs, including Islamic schools, Jewish schools, Christian schools and schools of Christian denominations, such as Anglican, independent Catholic, Greek Orthodox, Lutheran, Presbyterian, Seventh-day Adventist and Uniting Church schools
- Schools of educational philosophies, such as Montessori and Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as Grammar schools
- Trade schools
- Community schools, including in Aboriginal communities
- Boarding schools
- Schools that specialise in meeting the needs of students with disabilities and students at risk

Independent schools are institutions founded by religious or other groups in the community and are registered with the regulatory authority, the NSW Education Standards Authority (NESA). Most independent schools are set up and governed independently on an individual school basis. However, some independent schools with common aims and educational philosophies are governed and administered as systems, for example those within the Anglican Schools Corporation and Seventh-day Adventist systems.

Two-thirds (65%) of independent schools in NSW are in low to average socio-economic status communities. In addition to having low fees, many independent schools are small, with almost half (40%) educating fewer than 200 students.

The education of students with disability in the independent school sector in New South Wales has a long history. The sector was the first provider of school services for students with disability with the establishment of the first independent special school in 1860. Since that time an increasing number of independent special schools have offered NSW families a wide range of educational opportunities. Almost 18% of NSW independent schools are special schools for students with disability or special assistance schools for students at risk of disengaging with education.

The number of students with disability in regular (mainstream) and special schools in the NSW independent sector continues to grow at a steady rate. In 2009, the number of students with disability was 3,391. By 2018 the number of students with disability had grown to 36,479, making up 17% of all students attending NSW independent schools.

A range of factors account for the increased enrolments of students with disability in the sector, including the overall increase in the number of students attending independent schools, and the shift in all sectors to more students with disabilities being educated in mainstream school settings whilst maintaining a strong special

school offering.. In addition to this, the *Disability Discrimination Act 1992* (The Act) had a significant impact in enabling students with disability to be offered the same educational opportunities as other students.

The NSW independent sector provides parents of children with disability with a wide choice of settings including inclusion within a mainstream school or a special school. This choice is fundamental in providing parents with the opportunity to exercise their rights to decide on the most appropriate educational setting for their child.

The costs of providing educational services to students with disability are many times greater than for other students. AISNSW acknowledges the financial support of the NSW and Commonwealth Governments that provide an essential contribution to the education of these students, supplemented by additional income provided by all students' parents, families and communities. In an independent school, all parents share the costs of all students, including students with disability, through their fees.

The role of AISNSW

AISNSW is the peak body for independent schools in NSW. AISNSW supports schools through high-quality professional learning courses and tailored consultancy support that is responsive to their context including support to schools on the Nationally Consistent Collection of Data on School Students with Disability. This consultancy support is delivered flexibly to promote equity of access for schools in metropolitan, regional and remote areas. Education Consultants employed by AISNSW, with expertise in special education, spend on average four days every week in schools. Support focuses on, but is not limited to, the enrolment of students with disability, facilitation of the collaborative planning process as well as the identification, implementation and monitoring of adjustments in response to individual student's needs.

In addition, tailored school-based professional learning, online modules have been designed focused on application of the disability legislation including the Disability Standards for Education, the collaborative planning process, autism spectrum disorder, mental health and behaviour. Before COVID-19, these courses were also offered at school and sector level.

This submission includes a summary of survey results from a diverse sample of more than 250 principals, school leaders, registrars, specialist teaching and non-teaching staff in independent schools across NSW and the AIS staff who work across teams to provide cohesive support for schools enrolling students with disability..

Executive summary

In the role of peak body for the NSW independent sector, AISNSW provides extensive support for schools in understanding and applying the Standards. However, even with support from AISNSW specialist staff (known to schools as AISNSW Education Consultants) with expertise supporting students with disability in school settings, it is recognised that greater clarity from the Standards would be valued. The recommendations included in this submission have been informed by work undertaken by the Education Consultants in schools, along with a summary of survey results from a diverse sample of more than 250 principals, schools leaders, registrars, specialist teaching and non-teaching staff in independent schools across NSW.

Specific recommendations that will be clarified in greater detail in this submission include:

- Access to ongoing professional learning developed and delivered by appropriately qualified experts inclusive of evidence-based practices.
- Greater clarity around the understanding of ‘unjustifiable hardship’ and reasonable adjustments
- Guidance for parents to support their understanding of different schools’ contexts when enrolling their child in a school. For example, just as parents may specifically look at the school sport program if their child was good at sport, parents may also consider the operational arrangements such as the size of the school and the number of transitions in a day for their child who thrives on routine and engages for short periods.
- Ongoing support for schools to assist with their understanding of the Standards and guidance notes that consider the complexity of student needs, determining appropriate adjustments to best meet the student’s needs compared to school resourcing allocations.
- Provision of expert advice regarding the access needs of individual students and the impact of the infrastructure constructed to meet the minimum building codes.
- Sustained expert support for schools in planning and implementing age-appropriate, high-quality curriculum and assessment adjustments for individual students with disability within specific school contexts.
- Given the variability of availability and access to support services, expert guidance contextual to the school setting is required to enable schools to best support students with disabilities and their families in engaging appropriate support services.
- Further guidance is required for the authentic integration of Personalised Learning Plans for Aboriginal and Torres Strait Islander students with disability and their Individual Plan
- Further investigation and potential solutions are needed to support schools and families in providing effective adjustments for students with disability learning remotely during COVID-19
- Development of additional support materials including case studies and hypothetical scenarios to complement the Standards. AISNSW is very willing to continue to work in collaboration with appropriate authorities in the development of these resources.

Knowledge and understanding of the Standards

A key purpose of the Disability Standards for Education (the Standards) is to clarify the education provisions of the *Disability Discrimination Act* (the Act). The Standards are intended to make it more accessible for schools to understand their obligations under the Act. The results of a recent consultation conducted by AISNSW with more than 250 school staff reveal the need for ongoing strengthening of their knowledge and understanding, of the rights, obligations and measures of compliance with the Standards.

Of the more than 250 school staff who provided input into this submission, most principals (92%) and all deputy principals believe they understand their school's obligations and their responsibilities for students with a disability to access and participate in education. Most principals (83%) reported that they are familiar with the terms of the Standards. These percentages were also mirrored among specialist staff. The percentage of classroom teachers that reported unfamiliarity with the Standards was much higher at 57%.

These responses appear consistent with the information provided by the contributors regarding their own participation in professional development about the Standards. Approximately 70-75% of principals, deputy principals, and school leaders reported participating in relevant professional development about the Standards, while just 23% of classroom teachers reported the same.

Of the contributors who reported participating in relevant professional development about the Standards, these were almost exclusively made up of online and face to face professional learning offerings delivered by AISNSW. This highlights the value of this professional learning being accessible and provided by professional with relevant expertise and school-based experience. Recent feedback from schools identified an ongoing need among some school staff for further guidance about the consultation and collaborative planning process for students with disability. In response, AISNSW has developed a new online learning module to meet this need and continues to provide targeted school-based consultancy support to schools.

Part of the support provided to schools by AISNSW on the Nationally Consistent Collection of Data on School Students with Disability (NCCD) focuses on the Standards. Embedded in all of these professional learning offerings is information aimed at developing participants understanding of the definition of disability and schools' obligations and responsibilities under the Standards. In 2019 over 550 participants completed this training delivered by AISNSW. Course evaluations reveal that at least 90% of participants reported that the professional learning effectively built on their prior knowledge and helped to clarify their understanding of their obligations under the Standards. This suggests that knowledge gaps of some school staff could be effectively addressed through better access to relevant professional learning opportunities provided by appropriate professionals with expertise in supporting students with disability.

Due to the mobility of the workforce including the continual stream of teachers returning from leave or joining the teaching force and the imperative to build on the range of understanding of the Standards within every school, sustained professional learning will continue to be needed. While there is an on-going need for further professional learning differentiated to meet the entry knowledge of the participants, access and participation of students with disability depends on the application of the Standards in an individual school context. The challenge for schools is providing all staff with support to embed the Standards into their daily practice. This requires expert support for the school in mentoring staff to apply the Standards to all aspects of school from buildings, school organisation, curriculum, programming, pedagogy, extra-curricular activities and wellbeing and a thorough understanding of school context.

Application of the Standards

While knowledge and understanding of the rights, obligations and measures of compliance in the standards is important, application of them is key to ensure students with disability are able to access education on the same basis as other students.

Of the school staff who provided input into this submission, there was a clear difference in responses showing that while many may have a good understanding of their obligations under the Standards, they were not necessarily confident in their ability to successfully implement them. For example, 92% of principals feel they understand their school's obligation and responsibilities under the Standards, but only 70% were extremely confident or confident to implement adjustments for students. Similarly, 79% classroom teachers report they understand their obligation and responsibility under the Standards, but only 46% feel confident implementing adjustments.

Making reasonable adjustments

When it comes to making reasonable adjustments for students with disabilities most school staff report having a good understanding of collaboration evidenced by Individual Plans to record adjustments. Feedback also suggests that in some cases, classroom teachers may need to be more involved in the collaborative planning process to ensure effective implementation.

Input from staff at different levels reveal opportunities for improving application of the Standards at the school level by providing resources to support implementation. For example, some classroom teachers commented that there are no clear guidelines and procedures for implementing adjustments. While in comparison, some school leaders commented on staff resistance and confusion in implementing adjustments effectively. Addressing this effectively may be done through access to regular professional learning opportunities and educational resources to accompany the Standards including a broader range of case study examples. This said, it is critical that schools understand that the legislation requires a case by case plan rather than applying generalisations from case studies. The expert support from Education Consultants or sector staff is essential in guiding schools to develop and implement personalised adjustments designed with an individual student and family for a specific school context.

Overwhelmingly, school leaders continue to report that the concept of *unjustifiable hardship* in determining and providing appropriate adjustments and support for students with disability continues to present challenges. Schools would benefit from further clarification of the term *unjustifiable hardship* in the guidance notes for more consistent application. Though this issue has been raised in previous reviews, schools continue to report that there is still a general lack of understanding about the threshold requirements for *unjustifiable hardship*, with many needing to seek independent legal advice to fully understand this concept.

Standards for enrolment

The collaborative planning process that occurs in consultation with the student and parents/carers determines how each student will be provided with reasonable adjustments to access and participate in education on the same basis as their peers. Though the Standards and guidance notes provide some direction, principals and school leaders still identify the enrolment process as challenging. Some of these challenges relate to the complexity of student needs, determining appropriate adjustments to best meet the student's needs compared to school resourcing allocations. To supplement the information found in the Standards and Guidance notes, AISNSW has developed a supplementary guidance document for independent schools to support them to apply the Standards at enrolment; *Guidelines for Enrolling and Supporting Students with Disability for AISNSW Member Schools*. This resource has assisted in strengthening schools' understanding of the enrolment of students with disability.

AISNSW provides the services of Education Consultants, with expertise in supporting students with disability, to all NSW independent schools. This support includes working collaboratively with school principals, staff, students

and parents to develop an Individual Plan that is the documented outcome of the collaborative planning process. The Individual Plan identifies the student's needs and outline adjustments and strategies for implementing to maximise student access, participation and the provision of support services. Education Consultants also support schools in determining reasonable adjustments to school facilities, equipment and resources required for individual students and provide assistance in all aspects of implementation related to the NCCD.

Standards for participation

Information gathered from school staff to inform this submission indicated that providing adjustments to facilitate the participating of students with disabilities in camps, field trips and excursions can still present as a challenge.

Less than half of the contributors report experience applying the Standards in building and infrastructure, which may indicate a lack of understanding that points to an opportunity to improve Guidance notes and education. An example of the difficulties around building infrastructure is where accessible bathrooms are built to the minimum building codes which can prove problematic when a student with a disability requires additional pieces of equipment such as change tables and hoists and the bathroom is built too small. This can prevent the student from being able to use the new building. If the student must instead travel to accessible facilities further away (eg on the other side of the school), they effectively receive less education than other students because of the additional time they are forced to spend away from the classroom. AISNSW provides consultancy support regarding the development and refurbishment of building projects to help schools avoid these types of issues.

Standards for curriculum development, accreditation, and delivery

Challenges experienced in the delivery of curriculum include ensuring the adjustments are appropriate for the functional needs of the students and the adjustments are regularly reviewed and monitored for effectiveness. Practical examples of strong classroom instruction include the provision of targeted tier two supports and personalised intervention programs.

While contributors to this submission indicated a good understanding of their obligations under the Standards to provide adjustments in assessment practices, AISNSW consultancy data indicates that this continues to be an area for development, particularly in senior secondary schools. Contributors to this submission commented strongly on the tension between NSW Education Standards Authority (NESA) HSC requirements and meeting the obligations under the Standards. In response to this identified need, AISNSW has developed and delivered targeted professional learning opportunities on providing adjustments in Years 11 and 12, with a specific focus on assessment.

While contributors to this submission acknowledged that Teacher Assistants are helpful resources when it comes to implementing this aspect of the Standards, schools are unsure if support staff are always used to the best effect. Another challenge noted by schools is the time required to document provided adjustments and maintain evidentiary requirements, particularly as part of the NCCD. School leaders and classroom teachers both identified the need for time to co-design inclusive programs for students with a disability and plan for curriculum delivery. These challenges are likely best addressed through better access to professional learning and sector consultancy support, particularly that which focuses on the structural and process elements to assist schools make best use of existing resources.

Standards for student support services

One of the challenges that exist is the school's ability to access external support from allied health professionals particularly in mental health. This can be due to unclear referral pathways, long waitlists, and service provisions. A division of AISNSW is the Student Services Team consisting of highly qualified experts that provide consultancy support and professional learning to support the access and participation of students with disability and literacy and numeracy needs in the independent school sector.

As a response to the arising needs, AISNSW has employed two psychologists to support schools and developed a series of online modules to provide schools with access to professional learning on mental health needs.

The National Disability Insurance Scheme (NDIS), continues to provide challenges for students and parents/carers to access appropriate support services external to the school. Schools reported great variability in the services provided for students with disability and their families as part of NDIS. Post school planning options for students with disability remain particularly challenging due to the limited information in this area.

Another challenge identified by contributors to this submission is the difficulty in providing support for students with complex and challenging behaviour and implementation of appropriate adjustments, particularly in cases where the behaviour impacts on others in the school environment. To help schools better address this need, AISNSW is currently developing a Framework of Behaviour Support & Student Engagement including five modules on Supporting Students with Challenging Behaviours and an additional professional learning module specifically focused on school leadership.

Within independent schools, a range of support services exist to assist students with disability depending on school context and resourcing. For example, some schools have employed Psychologists and Counsellors while other schools are dependent on external services at a cost. Responses from contributors highlighted differences between school leaders, specialist staff, and classroom teachers in their understanding of available support services and how to access them. School leaders and specialist staff (approximately 75-85%) have a greater understanding than classroom teachers (23%).

Appropriate support services are often pivotal to the effective access to school for students with disability. Awareness of a range of support services and how to access them will only be effective where there is appropriate advice within the planning process as to whether the support service will be able to provide the identified adjustment.

Impact of the Standards on the experiences of Aboriginal and Torres Strait Islander students with disability.

AISNSW as the peak body for the NSW independent sector, is not the governing body of independent schools, and any data in independent schools are owned by the school themselves. The current numbers of Aboriginal and Torres Strait Islander students with disabilities is unknown as the census collects the numbers of Aboriginal and Torres Strait Islander students and those with a disability, but not the number of Aboriginal and Torres Strait Islander students with a disability. AISNSW Education Consultants support schools in the development and integration of Personalised Learning Plans and Individual Plans with Aboriginal & Torres Strait Islander students with disability and their families.

Aboriginal and Torres Strait Islander students with a disability are supported in the same way all Aboriginal and Torres Strait Islander students, through the development of Personalised Learning Plans. One challenge identified is the role of developing an authentic Personalised Learning Plan to sit alongside a student's Individual Plan and how this can enhance communication between the home and school, as well as the support structures that are developed to assist the student within their education setting. AISNSW provides an online learning course at no cost for all schools to access professional learning on Personalised Learning Plans for Aboriginal and Torres Strait Islander students, with an average of over 300 participants each year completing the professional learning.

There is still a lack of understanding in schools that an Aboriginal and Torres Strait Islander student's culture and family history have a significant role to play in supporting their educational achievements and engagement in schooling. This is amplified when a student has a disability. However, some schools, are undertaking processes to work in partnership with parents/carers and community to support Aboriginal and Torres Strait Islander students with a disability (learning and/or behaviour). In one example, a school reported engaging the local Aboriginal community to create a culturally safe and engaging space for Aboriginal and Torres Strait Islander students and their families. This school is also in the process of developing a Reconciliation Action Plan and engaging parent/carers and significant others in student learning, wellbeing, and engagement outcomes as their core business.

In order to support schools enrolling Aboriginal and Torres Strait Islander students with disability, AISNSW provides a cohesive service through the collaboration of their Aboriginal Education Consultant and the Education Consultants with expertise in supporting students with disability in schools.

Impact of COVID-19 on students with a disability

While independent schools have been able to respond quickly to meet the needs of their students during this challenging circumstance, the impacts of COVID19 have not been equally felt across all schools and all students. Much of the impact of COVID-19 on students with disability are common to all students including challenges around the availability and access to technology, particularly in rural and remote areas, consistent internet connection in rural areas and the challenges for teachers, families and students with the delivery of instruction online.

Beyond these, barriers for students with disability were exacerbated by the COVID-19 pandemic. For example, reports of less accurate information gathering and less effective collaboration with families has been problematic for some students who were forced to complete enrolment process remotely, rather than in person. Another challenge for some students with disability has meant the change in routine from school to learning from home is still having an impact, with some students struggling to adapt and finding it difficult to return to school, further disrupting their education and increasing anxiety.

Some students were unable to access individualised support online and teachers reported that they were not always able to effectively differentiate learning, make appropriate adjustments or monitor and review adjustments remotely. The capacity of parents providing learning from home to fill the gaps understandably varied greatly according to individual circumstances (as it did for all parents of students learning from home), and therefore these challenges have impacted students in a range of ways.

Opportunities for amendments to the Standards, national collaborative action and strengthening knowledge and capabilities of teachers and educators

The introduction of the Standards has positively supported access to education for students with disability, providing a common language and scaffold to assist schools comply with their obligations under the *Disability Discrimination Act*. Legislated reviews have sought to address issues including clearly defining terms and clarifying obligations, though there remains confusion around the application of some obligations including that of *unjustifiable hardship* and *reasonable adjustment*.

Clarifying language in the Standards and Guidance notes inclusive of case studies and hypothetical scenarios will help to ensure the Standards are able to effectively achieve their objectives, including ensuring that students with a disability have the same rights to education as other students and do not experience discrimination. Paired with ongoing education of classroom teachers and school leaders, the consistent application of the Standards will help promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

The NCCD portal, which is accessible by all education sectors has impacted positively and provides cross-sectoral resources. The Disability Standards for education e-learning modules and the NCCD case study e-learning modules highlighting how adjustments can be implemented has provided professional learning opportunities to strengthen the knowledge and capabilities of teachers and educators. Development of additional professional learning resources such as online, self-paced training modules could be developed to ensure consistent messaging and understanding of the Standards across all sectors. This could include targeted education for schools about how to best work with families that are reluctant to disclose information that can impact on their child's education. The development of resources to support families to engage with schools may also be useful. For example, fact sheets and culturally appropriate resources for Aboriginal and Torres Strait Islander students with a disability.

While case study examples have been developed from previous reviews, these resources should be reviewed and further improved to ensure they reflect the diverse range of scenarios schools may face. Extending these examples to include relevant examples from case law may also help schools understand the extent of their obligations.

The sustainability of knowledge for education authorities is a major difficulty for schools in meeting their obligations under the Standards. The traction of education in this area is limited due to the complex and mobile nature of the educational environment. A range of high quality professional learning opportunities including workshops, training packages and resources should be readily available to all principals and school leaders as well as classroom teachers. Further, improved, targeted, ongoing professional development should be undertaken by all teachers in order to ensure that they are well equipped to respond appropriately to the full range of student needs. The Australian Professional Standards for Teachers require that all teachers are able to design and implement teaching activities that support the participation and learning of students with disability and address relevant policy and legislative requirements. The link between this expectation of all teachers and the Standards should be made more explicit, perhaps by imposing additional mandatory training requirements for teachers, similarly to the requirement for regular child protection training.

The pivotal role of system and sector expert Consultants is also critical to the implementation of any amendments of the Standards or supporting resources. These staff support schools with understanding and application of the Standards for individual students with disability within the specific school context, enhancing knowledge, confidence and the implementation of a consistent process in schools.