Submission

to the

2020 Review

of the

Disability Standards for Education 2005

Prepared by Carol Barnes [redacted]

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Summary:

This experiential submission focusses on **students** with **disability** who are also intellectually **gifted** (ie, intellectual ability in top 10% of age peers) in primary and secondary **education** settings. The submission describes the barriers encountered by intellectually gifted students with disability and by their parents, with particular emphasis on how little is known by education providers in all three sectors about their obligations under disability discrimination **legislation** (in particular the *Disability Standards for Education 2005*), and consequently how impossibly difficult it is for some gifted students with disability (and indeed for *all* students with non-apparent disability) to obtain approval for **disability adjustments**, both for classroom activities and in-school assessments and for high-stakes State tests and exams such as NAPLAN and Year 12 final exams.

Recommendations are included regarding possible solutions to the problems and issues canvassed in the submission. Lived experience **examples** in support of the assertions in the submission are listed in Appendices. All such case examples date from **before COVID-19** times, and accordingly cannot be ignored or dismissed on the grounds that education providers are suddenly now too 'busy' learning about remote online teaching to also learn about, or to honour, their obligations under disability discrimination legislation.

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1. What is this submission about?

This submission is made in response to the call for submissions by the 2020 Review of the Disability Standards for Education 2005 https://disabilitystandardsreview.education.gov.au/ ('***Review***') and in particular the questions raised in the Review's Discussion Paper ('***Discussion Paper'***) https://disabilitystandardsreview.education.gov.au/discussion_paper/

I note the Review's advice that submissions will be accepted until today, 25 September 2020.

Author's familiarity with the population of students described in this submission

Since 2015 I have been an Honorary Visiting Fellow at the **School of Education** at the **University of New South Wales ('*UNSW'*)**, but I make this submission in my ***personal capacity***, and I note that it has not been endorsed by, and does not necessarily reflect the views of, UNSW.

Since 2005 I have also been national coordinator of **GLD Australia**, a national non-commercial online learning community and support group responding to the needs of gifted learners with disability ('***GLD***'), and the needs of those who teach, care for, or advocate for them, through the sharing of information, research and personal experiences.

GLD Australia is a not-for-profit independent learning community with a member-owned and member-operated online discussion list. It is affiliated with the Australian Association for the Education of the Gifted and Talented http://www.aaegt.net.au, which is the Australian national umbrella association for State and Territory gifted associations.

GLD Australia has no political affiliations, is not an incorporated association, and thus has no income, membership fees, property, officers, employees or premises. Run entirely by non-paid volunteers, it does not offer any tutoring or exam preparation courses or other commercial services.

Because GLD Australia is not a legal entity, I make this submission in my ***personal capacity***, as a volunteer advocate who has been supporting parents of GLD children for around 15 years.

In the course of my volunteer work for GLD Australia and for a variety of other gifted and learning disabilities associations and groups, I have since 2005 spoken to, and communicated via email with, many hundreds of parents whose GLD children are not having their needs met at school, and in particular parents who have encountered problems:

- when applying to education providers for disability adjustments for their children's in-class work, or

- when applying to government authorities for disability adjustments for their children's Year 12 final exams, or

- when appealing to the Australian Curriculum, Reporting and Assessment Authority ('***ACARA***') to reverse State government authorities' decisions to refuse disability adjustments for NAPLAN.

I have also liaised with a wide variety of NSW and Queensland primary and secondary teachers, schools and other professionals in this context for over a decade.

This submission presents an aggregation of my everyday experiences from over the past two decades in volunteering and lecturing in this field, and the experiences of many hundreds of those parents, teachers and other professionals, as reported to me.

The examples which I have cited below are drawn largely from NSW and Queensland - the two jurisdictions in which I live, and where I have the most experience in supporting parents. However, they are representative of my more limited experience in supporting families in other Australian jurisdictions as well. This is not an issue confined to, or emblematic of, just two eastern States.

I include the biographical information above to explain the genesis of my familiarity with this population – not as an assertion that my views reflect those of all members of GLD Australia or of any of the other voluntary associations with whom I work, or that I in any way have authority to speak on their behalf.

In the interest of completeness, I note also that I do not run a business or sell any publications or products. I do not accept fees from parents for advocating for their children, and I do not accept fees for lecturing at universities, for providing in-service professional development or training to teachers in schools, or for speaking at conferences, even when I am an invited speaker.

I am not a qualified teacher. I lectured at the university level for around 10 years in the 1970s, but I have no personal experience of teaching gifted or non-gifted primary or secondary children, with or without disability.

Though I am a retired lawyer, I do not 'act for' parents in my capacity as such. Rather I support parents in my capacity as volunteer support person, notetaker or advocate only (though I always disclose the fact of my legal qualifications when I accompany a parent to an Australian Human Rights Commission ('***AHRC***') conciliation conference).

In the interest of transparency, I note also that I am currently undertaking a PhD in Law on the topic of this submission at Bond University, Gold Coast, Queensland.

Confidentiality

This is **NOT** a **confidential** submission, and I expressly grant permission for it to be published on the Review's website and/or circulated to anyone who the Review believes might wish to see it. Similarly, I record here that I will be sharing it with the members of GLD Australia and with a variety of other parents, teachers, academics, government officials and disabilities associations who have reason to be interested in its contents and recommendations.

2. Narrowing the scope of this submission

Discussion Paper

This submission will be confined to the following issues raised on page 6 of the Discussion Paper:

- Participation: Has your education provider/s made reasonable adjustments to ensure you or your child can participate in education? This includes participating in courses and programs, the curriculum, and using facilities. How did your education provider consult with you? Were you happy with the outcome?
- Supporting students: Have you or your child been appropriately supported during your / their education? This includes being able to access supports, including specialist resources.
- Harassment or victimisation: If you or your child experienced harassment or victimisation in an education setting, what happened? What steps did your / their education provider take to address this?
- Compliance: If you considered that an education provider was not meeting their obligations, how was it dealt with? Did you know how to make a complaint? What happened?
  ...
- Specific experiences: Access and participation in education for students with disability may be affected by other circumstances such as age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background. Tell us about how your circumstances affected your access and participation in education.

Further, the submission will focus primarily on two decades of experiences of children with disability who are also intellectually gifted (ie, children of parents who are or have been members of GLD Australia).

Typically the disabilities in this context include:

- DSM5 disorders such as **specific learning disability** (dyslexia/reading disorder, disorder of written expression, and dyscalculia/mathematics disorder);

- **ADHD**, especially the predominantly inattentive presentation thereof, without visible symptoms of hyperactivity, impulsivity, defiance or disruptive behaviour;
- **autism**, especially so-called 'high functioning' autism Level 1; and
- to a lesser extent, **mental health** needs such as depression and anxiety disorder – which some parents see as 'parasitical' disabilities, in that the child began to experience them only as a result of starting school and soon realising that they were not able to learn to read or do math or pay attention or make friends as effortlessly as their peers.

The challenges facing such students are often viewed as mysterious, and generally dismissed as being due to laziness rather than disability. This is so especially if the student is not failing at school, or is even managing to perform quite well academically despite the disability (though not to perform as well as if the legislatively prescribed disability adjustments were being approved and implemented, especially for high-stakes exams).

Just as the Legislation contains no exemption for people with disability who are rich, or people with disability who are blond, so the Legislation contains no exemption for people with disability who are also intellectually **gifted** and/or high performing in spite of their invisible concomitant disability. I submit, therefore, that a child's giftedness or high academic performance cannot justifiably constitute a 'defence' to a complaint of disability discrimination under the Legislation (see **Part 4.2.4** below).

This submission will deal only with children with disability who are *intellectually* gifted, though it is acknowledged that there are other domains of giftedness (eg, creative, social-emotional, physical). As a matter of practice, however, giftedness in other domains is not raised by education providers as a defence or justification or excuse for denying disability adjustments to students with disability.

Finally, while this submission draws attention to students with disability who are also intellectually **gifted**, the vast majority of the arguments presented here apply equally to **all** school children with disability.

Structure of the submission

Aware, as I am, that not every reader will be interested in every portion of this submission, I have signposted the main arguments with sub-headings. Sometimes, however, an argument goes to two or more discrete issues. In such cases, to avoid repetition, I have highlighted **in blue** the **Parts** of the submission, so that each issue is dealt with and supported fully in only one **Part,** and then simply cross-referenced in context in others.

Terms are defined whenever they first occur in the text, and a glossary of defined terms appears in **Appendix G**.

3. Context of this submission

The children with disability of the parents who contact GLD Australia are generally extremely behaviourally compliant. In the early years, many present as ‘average’, since their giftedness serves to camouflage their disability, and their disability undermines and masks their high intellectual potential. As non-squeaky wheels, they attract little attention – **until they begin to fail at school**.

Often this occurs in late primary or early secondary school when academic work demands more hours of sustained effort, and when students are presented with ever increasing volumes of reading, and organisational and time management challenges.

It is generally at this point that a gifted child’s invisible disability is first identified, and parents begin to take action to ensure that the disability is being appropriately addressed and supported at school.

It is usually at this point also that parents begin to encounter obstacles, initially with respect to having their children’s needs met in the classroom, and later in the context of applying for disability adjustments for NAPLAN and for the Year 12 final exams**.**

Depending on the nature of the professionally diagnosed and documented disability, and the level of impairment occasioned by it, such professionally recommended disability adjustments for exams might include: rest breaks, extra time to read and/or write, access to a scribe, permission to type long prose answers on a computer without spellcheck, large print, dimmed lighting, separate supervision, preferential seating or flexible exam scheduling.

After 15 years in this field as a volunteer, I find myself day after day arguing the same points and providing the same explanations – different school, different child, different disabilities but same arguments.

The vast majority of parents who contact me present with fact situations which in my judgement could justify filing a complaint with the AHRC pursuant to the Legislation – indeed I have seen many less worthy cases proceed to conciliation and eventually succeed.

Yet I am usually reluctant to advise that parents take that last-resort action because it is stressful for the parents, and time-consuming and thus costly for the staff of the AHRC and for the staff of schools, government departments and statutory authorities.

Further, if the child has already turned 18 at the time of an AHRC conciliation conference, the child may be named as the 'complainant' and thus required to participate in what can turn out to be a very confrontational and unpleasant process. In my judgement, no Year 12 child in the lead-up to their final exams should have to face the prospect of attending government offices to hear adults argue about the nature and extent of the child's disability, and pros and cons of the child's seeming motivation, effort, behaviour, demeanour and school history, and the degree of probability that the child is 'faking it'.

When I do decide to support (in my capacity as parent advocate, not as lawyer) a parent who sees no alternative but to file a complaint with the AHRC, that parent's complaint is **almost always eventually resolved in favour of the child** – no matter how many rejections their applications may have previously received from schools and government authorities.

I have prepared this submission hoping that a solution may be found which will result in parent advocates spending far less of our time interceding on behalf of parents in this way – a solution whereby:

- all students with medically verified and documented disability can, without filing an AHRC complaint, have access to professionally recommended disability adjustments for their everyday schoolwork, for NAPLAN and for the Year 12 final exams when appropriate, and

- all parents will have the knowledge which they need to apply for the adjustments, not merely those parents who happen to belong to a support group such as GLD Australia.

4. The issues

4.1 Lack of familiarity with legislation and policies

Schools and teachers rarely know enough (or anything at all…) about the Legislation or about their responsibilities and obligations with respect to implementing disability adjustments for students with disability in the classroom and for tests and exams.

Too many schools in all three sectors (public, Catholic and independent) are still initially alleging to parents, and to me as the parent's advocate, that they have never heard of any kind of disability discrimination legislation, viz.:

- federal *Disability Discrimination Act 1992* (‘***DDA***’)
  http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/
  (or perhaps one of its various State counterparts); and

- federal *Disability Standards for Education 2005* (‘***Standards***’)
  https://www.legislation.gov.au/Details/F2005L00767
  which constitute subordinate legislation made under the *DDA*, and whose provisions are enforceable (*DDA*, s. 32).

(hereinafter collectively ‘***Legislation***’).

When some enterprising parents print something off the internet to draw their school’s attention to the Legislation, the school’s response is often simply something such as:

- “Oh no, we don’t bother with that here. We are too small or big or busy or crowded or rural or inner-city or poor or understaffed or low-SES or high-SES, or academically selective, etc, etc.....”, or

- “Well it may have been a disability when he was little, but this is a high school and we want to treat our students here as adults who are totally responsible for their own success (or not…), so we can’t mollycoddle them on the grounds of disability.”

There is always SOME excuse.

Comparatively few schools seem to understand their obligations under the *Standards* to make reasonable adjustments for students with disability so that the student can access and participate in their education and attempt their exams **on the same basis as students without disability** (*Standards* ss. 3.3 (a), 6.2 and 6.3).

Similarly, comparatively few schools seem to understand that the provisions of the *Standards* are enforceable *(DDA,* s. 32*)* and, depending on the circumstances and certain conditions precedent having been met, arguably provide **entitlements** to the child – that they are **law,** not mere policy, and thus cannot be summarily ignored or explained away by education providers. I am amazed at how many educators over the years have told me that the *Standards* are just guidelines or advisory and explanatory documents, but that no one has to really do what they say. “And anyway, if I don’t obey them, what are you going to do about it?”

In almost all cases, the Legislation is currently being honoured more in the breach than in the observance.

Somewhat surprisingly, some principals in jurisdictions which have local schools autonomy or ‘independent public schools’ policies (or other similar), point to such policies as an excuse to be not governed by the Legislation.

For example the NSW '*Local Schools, Local Decisions*' policy (http://currentreforms.weebly.com/uploads/2/6/9/9/26999857/lsld_reform_overview.pdf) is being relied on to support a contention that, even in a State school, the principal is not governed by education department disability policies which have been posted on the department's website – policies which some principals have openly and publicly described, dismissed and disparaged as merely 'aspirational'. This still happens despite the fact that principals have been instructed by the department that the local autonomy policy in question does not confer complete and absolute autonomy in all contexts and circumstances.

With respect to applying to government authorities for disability adjustments for NAPLAN or for the Year 12 final exams, far too many schools claim that they've never done that before, that they don't know how to do that, or that they don't know whether or how a negative decision can be appealed, despite the fact that all that information is freely and clearly available on public websites, for example in NSW, with respect to the HSC exams, here: http://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions .

Often parents report that school personnel claim they cannot even *imagine* what a disability adjustment would look like. Some are unable to name even one example of such an adjustment. When directed to examples of such adjustments in academic literature or in the recommendations of reports authored by diagnosing professionals, the response is far too frequently, "Oh no! We can't do that here because [insert all manner of hollow excuses]."

Similarly, parents and private psychologists alike regularly complain about what they regard as an astounding lack of knowledge on the part of government authorities' staff who are charged with answering the phone and explaining an authority's policy with respect to applications for disability adjustments for NAPLAN and for the Year 12 final exams - personnel who clearly have no understanding of the meaning of IQ test reports or disability assessment reports.

Private professionals frequently question the qualifications and training of some of the people employed by such government authorities to review applications. (This may perhaps be explained by the fact that a parent once applied for a job at one such authority to do just that, and was told that they would be expected to review 6 files per hour for a very small wage.)

Just recently, one government authority representative suggested to a mother on the phone that if her child had an anxiety disorder, it would be better to not even attempt their Year 12 final exams at all. On what grounds can a non-health-professional clerk in a government authority possibly offer such gratuitous and ill-considered advice? And what if the parent had actually taken that suggestion seriously?

Even more reprehensible than claiming a lack of familiarity with the Legislation, however, are those who know only too well what their obligations are under it, but assert or pretend that they don't. Why would an education provider wish to acknowledge that they know what they *should* be offering in the way of adjustments for students with disability if they have no intention of ever providing adjustments? Said one teacher to me, "If I were to acknowledge that a child falls within the protection of the Legislation, then I'd be expected to do something about it – and I don't ever plan to do any such thing!"

4.2 Lack of compliance with legislative obligations – education providers' excuses

Typically a parent submits to a school a report from a professional (eg, paediatrician, occupational therapist, speech and language pathologist, optometrist, audiologist, psychologist, medical practitioner, etc) containing:

- a diagnosis of a child's disability, medical condition or other professionally recognised disorder,
- a quantification of the degree of impairment occasioned by it, and
- a list of recommendations for disability adjustments, remedial programs and other interventions to support the child in the classroom and/or during tests and exams.

In the face of such reports, education providers will far too often:

- attempt to unilaterally overrule the professionals' recommendations on a variety of far-fetched and patently specious and irrelevant grounds, or

- otherwise come up with countless unsubstantiated reasons as to why the recommended disability adjustments and interventions cannot be implemented, including sometimes simply a claim that acting in compliance with the *Standards* would be just too hard.

Examples of such excuses are listed in **Appendix A**, and a few of the more common ones are further explored in **Parts 4.2.1 to 4.2.7** below.

These excuses reflect the fact not only that too many education providers generally are unfamiliar with the Legislation, but also that their decisions tend to be based capriciously on personal beliefs and porous prejudices.

In my experience, except in the case of a visible, physical disability or intellectual impairment, and especially with respect to extra time and use of a keyboard, a child has very, very little chance of having the recommended adjustments approved for exams unless the parent is particularly knowledgeable and feisty, and appeals and appeals and appeals, and finally lodges a complaint with the AHRC for failure to comply with the Legislation, as described in **Part 5** below.

4.2.1 "But it's not a '*real*' disability – it's just 'neurodiversity' "

In the face of a parent's initial request for disability adjustments, too many teachers and other school personnel reportedly:

- claim that the child does not have a 'real' disability, but is merely showing signs of 'neurodiversity' – and "there's nothing wrong with that…", or

- declare that in their view the child does not have a 'real' disability, but rather has simply never received correct and effective teaching during early primary school (ie, that the child is merely an 'instructional casualty' and therefore legislatively entitled to nothing), or

- claim that the child does not have a 'real' disability and could surely write faster or read faster or improve their grades if only they would 'try harder', or

- flippantly dispute professionals' documented diagnoses of disability, without considering legislative definitions of 'disability', or

- enthusiastically discourage parents from relying on professionals' reports to apply to government authorities for disability adjustments for NAPLAN or for the Year 12 final exams, claiming that the process is just too difficult, and stating categorially something such as, "Don't bother – you won't get it! No one ever does.", or

- tell parents that the written recommendations of certain named professionals are 'never accepted' because "Everyone who goes to that doctor/psychologist etc always gets diagnosed with XYZ disability."

The latter assertion is particularly concerning.

I have indeed sent parents to the named doctors and other specialists, practically on their knees begging for their child to be diagnosed with XYZ disability, and the professional, after thoroughly assessing the child, has refused on the grounds that the child does not meet DSM criteria for that disorder.

Neurodiversity

Educators who, through ignorance or ill-will, elect to run the ‘not a real disability’ argument are increasingly assisted by the currently popular notion of ‘neurodiversity’ - a somewhat complicated ideology which has become progressively prevalent in some quarters in recent years, and which essentially eschews standard medical diagnoses of disability in favour of a ‘social’ or ‘human rights’ model of disability.

The social model views neurological conditions such as autism and other legislatively protected disabilities as part of the natural spectrum of human diversity, and posits that this diversity should be respected rather than pathologised. It is an ideology which essentially discourages reliance on standard medical diagnoses of disability and the search for ‘cures’. The social model holds that disability is essentially the result of the interaction between people with disability and a society founded on physical, attitudinal, communication and social barriers. The model requires that the physical, attitudinal, communication and social environment in schools must change to enable students with disability to participate in society on an equal basis with peers without disability. It espouses the changing of society to accommodate people with disability, rather than the changing of people to accommodate society. Anyone proposing an alternative view tends to find themselves labelled as ‘ableist’.

Without canvassing here the various arguments posited by the proponents and critics of this ideology (a complex task which is beyond the remit of this submission), it’s probably worth considering that, for purposes of obtaining approval for disability adjustments for in-class activities and for tests and exams, Australian legislation and policy are currently predicated on a *medical* model of disability – not a social one. Success in obtaining adjustments under the medical model depends on standard professionally diagnosed and documented disabilities – not bland, anodyne euphemisms.

In this context, I have seen too many families come to grief over the years by jumping on the neurodiversity bandwagon. They adopt an early stance of, “It’s not a disability but rather just a variation of ‘normal’ ”, “just a visual-spatial learning style”, or “just some other nebulous, legislatively useless and medically unrecognised descriptor.” … “and it’s not something which needs to be ‘fixed’ because it is society’s problem, not my child’s.”

Then, years later when the child is in high school with the all-important Year 12 exams looming, it turns out that the child needs extra time or permission to type or dictate in their exams in order to show what they know. But there are no longstanding medical diagnoses, and no medical or psychological reports, and so no evidence attesting to the fact that the child has a disability and needs those or any other adjustments – and by then, for that child it’s too late.

Some educators have similarly grabbed hold of a parent's newly found 'neurodiversity' conversion to argue that, since there is nothing 'wrong' with the child which needs 'fixing', schools don't need to provide any kind of adjustments.

The increasing use of neurodiversity-inspired euphemisms such as 'learning difference' or 'learning difficulty', instead of the words 'disability' or 'disorder', has serious especially consequences for students with disability when they reach Year 12. The absence of robust and well-documented professionals' reports evidencing a standard and well-recognised disability (and quantifying the levels of impairment occasioned by it) denies the child such adjustments, not only for exams but also for in-class activities all throughout their primary and secondary school journey.

I am told by numerous professionals that it is now not uncommon for a parent to arrive at a professional's office and open a conversation by demanding, "Before you start - I don't want him diagnosed with autism or ADHD or dyslexia or any other label. He is merely 'neurodiverse' and that is what I want your report to say. We just want the school to focus on his strengths, and for that he doesn't need 'labels'."

A sad by-product of the so-called 'neurodiversity' movement has been this: some educators are now actively and enthusiastically discouraging parents from seeking an early professional diagnosis of a possible disability, and/or introducing remedial interventions to address it.

Put simply, if what is 'wrong' with the child is not called a disability but rather attributed to 'neurodiversity', then the child arguably falls outside the protection of the Legislation and schools needn't bother doing anything about it. No need for costly and time-consuming remediation or hard-to-implement adjustments as prescribed under the Legislation, because "No, it's not a 'real' disability".

4.2.2 "But we get no money for that - it's not a '*funded*' disability"

Too many education providers don't understand the difference between 'disability' as defined in education departments' policy for purposes of public **funding,** and 'disability' as defined in legislation for purposes of disability discrimination legislation and hence disability **adjustments**.

Accordingly, schools point to lack of public funding as a justification for not providing remedial intervention or adjustments or other support on the grounds that a child's diagnosed disability does not fall clearly within one of the limited number of categories of disability which have been selectively tweezered out, **as a matter of policy**, by education departments for additional funding. Such policies are not noted for excelling at the task of acknowledging the elasticity of diagnostic categories.

For example, in NSW that policy is here: https://schoolsequella.det.nsw.edu.au/file/087c5e87-ef8e-4f7f-9806-83eb61fa00bf/1/Students-with-disabilities-in-regular-classes-funding-support.pdf

The selected disabilities in NSW are:

- moderate or severe intellectual or physical disabilities,
- mental health needs,
- autism, and
- hearing or vision impairments.

And of course these disabilities are all eminently worthy of funding – but are they any more so than all the other, perhaps unseen, disabilities which qualify within the definition of 'disability' under the Legislation, yet for which no targeted public funding is available?

Parents are still being regularly told, both in NSW and in other jurisdictions, "Take this ADHD diagnosis back to your paediatrician and ask for autism instead – and THEN we'll talk."

But what parent really wants a diagnosis of a disability which their child actually doesn't have, especially one for which no medicine is available as a possible treatment?

Of course it's patently true that schools are not adequately resourced when it comes to supporting students with disability in mixed-ability settings. But that is no justification for using the "no funding" argument as a reason to do nothing for children with disability. Surely the answer is to solve the funding problem so that all disabilities, not just a selective sprinkling of officially 'funded' ones, can be properly addressed in compliance with the Legislation.

This conundrum was the topic of one of the recommendations of the 2017 NSW Parliamentary Inquiry into Disability and Education. The funding issue is currently under review within the NSW Department of Education, and I have been invited to consult on it (as a non-paid volunteer).

4.2.3 "But it's *cheating*"

Sometimes school personnel flatly refuse to entertain the possibility of implementing disability adjustments because they seem to sceptically regard them as conferring some kind of ‘advantage’ on the child with disability: "We can’t allow your child to type their answers on a laptop because it wouldn’t be fair to the others.”

Educators generally do not understand that equal opportunity for all doesn’t necessarily mean equal curricula, equal assessment tasks, and equal outcomes for all in all circumstances. Equality does not always lead to ‘fair’.

When students have very different needs, it is not always ‘fair’ to always treat them all exactly the same, and to give them all exactly the same resources; equity demands differentiated responses according to students’ unique needs.

Equality means giving every child new eye glasses. Equity means giving every child new eye glasses fitted with the correct ophthalmological prescription.

Treating difference differently can indeed lead to equality of opportunity.

In general, disability adjustments *help a bit*, but they do not equalise.

For example, extra time in an exam to address a disability which results in a slow processing speed, a slow reading speed, a slow handwriting speed, a poor working memory or an uncorrectable vision impairment does not bring the child with the disability up to the level of a child without the disability – it just helps.

By way of analogy, a child who uses a wheelchair cannot play basketball except in the wheelchair. Accordingly, allowing that child to use the wheelchair (which here constitutes the disability adjustment) helps the child to play and to participate in the game. However, the wheelchair does not, by itself and without more, bring that child up to the level of the other children running around on two legs – the wheelchair helps, but it does not equalise. It does not remove the disability or make all players ‘equal’. The child in the wheelchair is still slower. And the playing field is not ‘levelled’ – it is just tilted slightly so that it’s not quite as ‘non-level’ as it otherwise would be.

Giving children with disability extra time for tests and exams does not make them as fast as children without disability, who can do their best in the time allowed and thus don’t need extra time, and who have been found in research studies to NOT benefit from extra time (see **Part 8.6.1** below).

And of course disability adjustments *only partially compensate* for the effects of a child’s disability, and in no way confer an unfair advantage on the child. Adjustments will not completely enable the child to perform as well as if they did not have the disability in the first place.

Further, even with adjustments, the child will have to *continue to work* very hard to attempt to overcome some of the effects of their disability, because no amount of extra time or access to a keyboard will help a child who has not learned their work and has not properly prepared for their exams.

Nevertheless, parents too often report that their enquiries to schools, departments of education and government authorities are sometimes met with a thinly disguised response to the effect that the parent must be some kind 'dodgy cheat', attempting to fraudulently procure an 'advantage' to which their child is not entitled.

A moment's reflection will contradict this widespread but meretricious belief.

A typical application for disability adjustments could be expected to include a report from:

- a developmental paediatrician,
- a general practitioner
- an educational and developmental psychologist,
- an occupational therapist,
- a language pathologist,
- an optometrist or ophthalmologist, and/or
- an audiologist.

For the Year 12 final exams, it would also include reports from several of the child's current teachers describing how the disability has been affecting the child's in-class work and past tests and exams.

Is it remotely possible that any parent, no matter how well connected, would have the power to cajole, convince or bribe each and every one of those professionals to conspire to attest to the fact that a child has a disability when in fact the child does not? To knowingly provide fabricated evidence in an attempt to enable the child to 'cheat'?

Further, would any of those professionals risk their professional qualifications, licence or reputation by deliberately including in their reports information which is not true for the sake of one measly fee from a parent?

4.2.4 "But she's already *gifted* - what more do you want?"

Many in GLD Australia have found it strange that the list of 'circumstances' in paragraphs entitled 'Specific experiences' on pages 6 and 8 of the Discussion Paper feature circumstances such as 'age, sex, gender, gender identity, sexual orientation, intersex status, ethnic origin or race, and culturally and linguistically diverse background'. **Why is giftedness not included in that list of co-occurring characteristics?**

The paragraph goes on to invite information about students with disability who have been affected by other circumstances. This Part is devoted to doing that, for in our experience students with disability who are also intellectually gifted face sometimes insurmountable hurdles in the disability space.

High IQs and low grades don't always live well together.

A surprising but indeterminable number of intellectually gifted children experience chronic and significant academic underachievement due to disability, especially if their complex learning profile is misunderstood. After repeated failures, unidentified or unsupported children become acutely aware of their difficulties with learning new material and/or with succeeding on limited-time exams. They eventually tend to conclude that they are 'just stupid', and to generalise their feelings of continuing academic failure to an overall sense of personal inadequacy.

The years of academic failure which a gifted child with disability may experience if neither their strengths nor their weaknesses are addressed will invariably lead to poor self-efficacy and self-concept, frustration, anger, lack of motivation, chronic literacy problems, poor peer relationships, disenchantment with school or finally school refusal and dropout. These in turn can have serious long-term damaging effects on academic outcomes, career opportunities, employment, socio-economic status, mental health, family and social relationships, and all aspects of adult life.

Although (as mentioned in **Part 2** above) there is no exemption, express or implied, in the Legislation for intellectually gifted children with disability, far too many schools point to a child's concomitant giftedness to justify a decision to not approve professionally recommended and documented adjustments. Typical rejoinders are, "But she's so clever, surely she'll *pass* anyway. She'll do just fine." or "But he's not failing – he's doing average… and of course there's nothing the matter with average now, is there?"

In general, schools and teachers rarely know enough (or anything at all…) about the possibility that a child can BOTH be intellectually gifted AND have a disability.
They do not understand that all gifted children can, and some indeed do, suffer from any one or more of the disabilities, disorders, dysfunctions, deficits, deficiencies, difficulties, disadvantages, detriments, impairments, impediments and ailments which may befall non-gifted children – except of course intellectual impairment.

A high IQ is protective against nothing but a low one.

Intellectually gifted children with disability are sometimes referred to in the research literature as '**2e**' (twice-exceptional) or '**DME**' (dual/multiple exceptionality) – the two seemingly conflicting 'exceptionalities' being the giftedness on the one hand and the disability on the other.

The disabilities in question may be visible or non-apparent, and may affect any or all of reading, spelling, written expression, mathematics, handwriting, organisation, persistence, social communication and mental health. Gifted children with disability can be expected to be simultaneously developmentally behind and ahead of their age peers and to present a layered and complex configuration of learning needs.

The Gagne model of giftedness has been expressly adopted by many Australian jurisdictions' education departments, for example:

- in NSW: currently https://education.nsw.gov.au/policy-library/policies/gifted-and-talented-policy para 3.2, and https://schoolsequella.det.nsw.edu.au/file/eb84936c-e00b-4812-b125-112360ca26f5/1/polimp.pdf page 6; and as of 2021, https://www.education.nsw.gov.au/teaching-and-learning/high-potential-and-gifted-education/about-the-policy#Guiding1, and
- in Queensland: https://education.qld.gov.au/curriculums/Documents/policy-gifted-talented.pdf page 1.

On the Gagne model, approximately 10% of all students may be assumed to be gifted (ie, high intellectual ability but not necessarily high grades), and accordingly roughly 10% of students with disability [except intellectual impairment] may be assumed to be also intellectually gifted (albeit as yet perhaps formally unidentified as gifted).

There is currently no definitive research on the percentage of intellectually gifted children who are struggling with a (sometimes undetected) disability. Exact numbers are hard to determine, as the estimated prevalence varies according to each researcher's own definition of 'gifted' and demarcation of the scope of the co-occurring disability or disabilities. No federal or state instrumentality collects data on this population, since gifted children with disability constitute a minority within each of two other minority populations – intellectually gifted students on the one hand, and students with disability on the other.

Nevertheless, there is no justification for using the fact that we are unable to accurately pinpoint an exact prevalence as an excuse to do nothing for those gifted children with disability who clearly *do* exist in our classrooms. As long as there are *some*, this population of students with disability is worth supporting. We do not decline to treat children with a rare chromosome disorder on the grounds that, "Well, there really aren't all that many of them, so why should we bother?"

Noteworthy also in this connection is the fact that gifted students (along with students with disability and other minority populations) are expressly recognised as one of the many target groups under various jurisdictions' education policies, for example under the 2018 Queensland Inclusive Education Policy Statement – page 3 here: https://education.qld.gov.au/student/inclusive-education/Documents/policy-statement-booklet.pdf . Similarly, the website of the Queensland Curriculum and Assessment Authority ('***QCAA***') acknowledges that a child who has been identified as gifted could also have a disability https://www.qcaa.qld.edu.au/p-10/student-diversity/reasonable-adjustments, and accordingly may need adjustments to succeed at school, including adjustments for their Year 12 final exams.

The seeming contradiction that a child may have BOTH high cognitive ability AND a co-occurring disability is expressly recognised by:

- ACARA: https://www.australiancurriculum.edu.au/resources/student-diversity/meeting-the-needs-of-gifted-and-talented-students/ , and

- the Education Council, on its Nationally Consistent Collection of Data ('**NCCD**') website: https://www.nccd.edu.au/wider-support-materials/which-students-are-included-nccd-under-definitions , and

- state and territory education departments, for example in NSW currently: https://education.nsw.gov.au/policy-library/policies/gifted-and-talented-policy para 3.1, and https://schoolsequella.det.nsw.edu.au/file/eb84936c-e00b-4812-b125-112360ca26f5/1/polimp.pdf page 6, and https://schoolsequella.det.nsw.edu.au/file/c1498bd3-2044-48c7-9c3d-1e61fe0fed22/1/Gi-T-Identification.pdf pages 13-14; and as of 2021: https://education.nsw.gov.au/teaching-and-learning/high-potential-and-gifted-education/about-the-policy/high-potential-and-gifted-education-policy paras 1.3.2 and 4.5.2.

Nevertheless, some education providers continue to allege to parents that gifted students with disability do not exist, and that disability adjustments are allowed only for *intellectually impaired* or otherwise struggling students.

Such attitudes are counter-factual and indefensible.

Giftedness does not preclude disability – and vice-versa.

In fact, a student with a very high IQ of 150 is just as disadvantaged by, for example, visual impairment or motor dyspraxia as a child with an average

IQ of 100 (perhaps more so, in terms of the frustration engendered by the simultaneous presence of both competing characteristics).

In summary, the fact that a child may have been identified as intellectually gifted, or may be enrolled in a select-entry class or school, or may have been accelerated, in no way implies that the child could not also have a disability or will not need disability adjustments to succeed academically.

And the fact that such students apply for disability adjustments should not be cynically viewed as an indication that the student or their parents are thereby trying to deceitfully secure some form of undeserved 'advantage' vis-à-vis average-IQ children.

Applications for disability adjustments should be approved or rejected always and only on an intellectual-ability-blind basis.

Parents report their frustration when an education provider:

- refuses to implement disability adjustments on the grounds that their gifted child's work is already above the level of their cohort, or

- refuses to allow the gifted child to continue in a remedial or learning support program, or to continue to be 'counted' for purposes of the NCCD exercise, for the very same reason, or

- acknowledges the effects of the gifted child's disability (eg, the child can't read) but excuses those concerns on the grounds that surely such a clever child will be able to compensate for their inability to read better than most non-gifted students.

The schoolwork of a gifted child may indeed be at the level of the 'average student' in the cohort or even 'better than most', but still their academic performance is not in keeping with the level of the gifted child's academic ability or potential.

In other cases, disability adjustments are initially approved on the grounds of a student's disabilities, but then almost immediately withdrawn or curtailed or decreased on the grounds of their giftedness (and see **Parts 4.2.4** and **4.2.7** below).

The underachievement or wildly erratic, inconsistent academic performance of a gifted child is invariably put down to laziness and lack of motivation. Accordingly, the child's report card is simply a litany of all his miserable shortcomings, without any practical suggestions as to how the child could improve.

One parent took such a report card and highlighted all the listed deficiencies, and asked the school, "Which of all these problems you have included here have I not already told you about, acknowledged, or provided professional documentary evidence about? Why are you just telling me what I already know? We recognise and admit that he can't read or write or pay attention or stay focussed or make friends. The question is not, 'What's the matter with him?' but rather, 'What are YOU going to do about it?' "

If a teacher truly believes that a gifted child is indeed just lazy, it is easy to understand why any mention of the child's rights under the Legislation is greeted with surprise and derision. However one Queensland study found that of 20 so-called 'lazy' children, 17 (85%) were struggling with an invisible and unidentified disability: http://eprints.qut.edu.au/29708/1/c29708.pdf - they were not in fact 'lazy' after all. There was a reason for their underperformance.

Further, in the case of the Year 12 final exams, the point is made repeatedly by government authorities' personnel that disability adjustments are designed just to allow students with disability to 'access' their exams (ie to read the questions and to communicate the answers, for example in NSW https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID=), instead of to attempt the exams '**on the same basis**' (*Standards* ss. 3.3 (a) and 6.2 (1)) as a student without disability, and certainly not for the child to perform on them in accordance with their academic potential.

In NSW the point is made repeatedly on the government authority's website and in public forums that the NSW policy is designed to merely allow students an opportunity to 'access' their exams, but NOT to achieve 'to their potential' – see for example para 6 here: https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID=. Yet the *NSW Education Act 1990* https://www.legislation.nsw.gov.au/#/view/act/1990/8/whole#/part2/sec5 stipulates in its objects (s. 6(1)(a)) that:

> *It is the intention of Parliament that every person concerned in the administration of this Act or of education for children of school-age in New South Wales is to have regard (as far as is practicable or appropriate) to the following objects — assisting each child to* ***achieve*** *his or her educational* ***potential.***

Admittedly, s. 6 is solely aspirational, in that it gives rise to no cause of action (s. 127), yet is NSW really justified in disregarding that Act's objects in the express way that it regularly and publicly does? The difference between what adjustments a gifted child will need can 'access', and what they will need to 'achieve to their potential' is enormous.

Admittedly, some gifted students will undoubtedly 'pass' their exams without their recommended adjustments, but still they will not have been presented with an opportunity to show what they have learned and what they can do **on the same basis** as a student without disability, gifted or otherwise.

How many students with an IQ in the 99th percentile who are academically ambitious and who have been excelling in school since Year 1 will be satisfied with 'just passing' as they progress through high school? Or 'just passing' on their Year 12 final exams whose results go toward their ATAR?

Parents, teachers, school counsellors and private psychologists report that in the same school, two Year 12 students with virtually identical disabilities (and with equal degrees of impairment and the same or equally strong medical and other professionals' reports and teachers' assessments) will apply to the same government authority at the same time, and:

- the application of the **gifted** student who is already achieving good grades in Year 12 (but is realistically aiming for higher ones....) will be mysteriously refused, while
- the application of the **struggling**, almost-failing student will be approved, without explanation or justification.

It is understandable then that psychologists and other medical and allied health professionals (who prepare numerous supporting reports every year and can accordingly accurately compare their many client-applicants from year to year) eventually lose all respect for a system which they come to view as little more than a lottery.

Such authoring professionals decry the shortcomings of a system under which one year a patient or client with a professionally measured reading speed in the 4th percentile will be allowed extra reading time, but the next year another child with an identical disability and an identical level of reading impairment will not, seemingly for no reason. And they marvel when another patient or client at a different school in the same calendar year with a professionally measured level of impairment in the 20th percentile (ie, a much smaller degree of impairment) qualifies for extra reading time and everything else they have applied for, again seemingly for no reason.

And then understandably, seeing no consistency in the outcomes, school personnel claim to be reluctant to spend any of their very limited time applying to government authorities for disability adjustments for gifted students who are already doing well and not failing. School officials assert to parents that they instead wish to devote their resources to applications for *struggling* students who are failing or likely to fail (contrary to the opposite assertion on page 15 of the NSW Ombudsman's May 2013 report to Parliament on HSC Disability Provisions:

https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0006/9789/HSC-Disability-provisions.pdf)

4.2.5 “But I have plenty who are doing worse – and under this new ‘*inclusion*’ model, I’m supposed to devote my time to them first”

When I began advocating for disability adjustments for students with disability some 15 years ago, the claim above is an excuse from educators which I never heard.

The students for whom I was advocating were presenting with disabilities which back then were considered serious and worth addressing in the mixed-ability mainstream classroom, but which today are increasingly being eye-rollingly dismissed as too ‘mild and unimportant’ to be bothered about.

These include:

- DSM5 disorders such as **specific learning disability** (dyslexia/reading disorder, disorder of written expression, and dyscalculia/mathematics disorder);
- **ADHD**, especially the predominantly inattentive presentation thereof, without visible symptoms of hyperactivity, impulsivity, defiance or disruptive behaviour;
- **autism** Level 1 – then called Asperger’s; and
- to a lesser extent, **mental health** needs such as depression and anxiety disorder – which some parents see as ‘parasitical’ disabilities, in that the child began to experience them only as a result of starting school and soon realising that they were not able to learn to read or do math or pay attention or make friends as effortlessly as their peers.

In general back then, children with apparent and easily identifiable disabilities such as severe intellectual impairment or physical disability or Tourette’s or non-verbal autism were not represented in mainstream classes, and most teachers were not usually required to become skilled at learning about their diagnoses or differentiating curriculum and teaching practices to address their needs.

This has now all changed, seemingly with turbocharged speed, because of an ideology termed ‘inclusion’ or ‘inclusive education’.

Inclusion

Proponents of inclusion assert that all children should be educated full-time together in the same school ('inclusion'), or preferably in the same mixed-ability classroom with similar-aged peers and with the same teacher ('full inclusion') – instead of in separate 'special education' support units within mainstream schools or separate facilities or schools staffed only or largely by teachers with extra specialised training.

Advocates posit that inclusive education means that *all* students, regardless of disability, ethnicity, socio-economic status, nationality, language, gender, sexual orientation or faith, can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs. *(See for example the 2019 NSW Department of Education Disability Strategy, page 3:* https://education.nsw.gov.au/content/dam/main-education/teaching-and-learning/disability-learning-and-support/media/documents/disability-strategy-2019-text-only.pdf *and the Queensland Department of Education Inclusive Education Policy, page 1:* http://ppr.det.qld.gov.au/pif/policies/Documents/Inclusive-education-policy.pdf.)

The catchcry of some inclusion advocates is something such as, "*All means all*" or '*Same classroom, same teacher, same schoolwork'*.

Some advocates envisage a system where all children are invariably grouped by chronological age, and where mainstream classroom teachers are trained in meeting every child's needs all by themselves, including how to insert feeding tubes and how to oil the inner workings of wheelchairs. This, I have been told, is what every student teacher knowingly signs up for on entering university, and this is what 'same classroom, same teacher, same schoolwork' means.

Some who see the educational world through an exclusively full inclusion gaze suggest in public that we must stop training teachers in special education, and we must remove all allied health professionals from classrooms. It is posited that regular classroom teachers should be able to do whatever these highly trained specialist professionals have traditionally been doing, and that all students, with and without disability, will benefit from being educated by the same teacher with similar-age peers in the same room.

The idea is that there should be no 'special treatment' for anyone, ever. In meetings and at conferences, I have heard some full inclusion advocates argue for the closing down of all schools for specific purposes, all support units within mainstream schools, all selective high schools, all selective Year 5 and 6 Opportunity Classes, all sports and performing arts high schools, the Australian Ballet School, and even the Sydney Conservatorium of Music. These are all condemned as forms of so-called 'segregation' because they separate some children out at the expense of others who don't get 'selected'.

Some mainstream educators, special educators and allied health professionals, however, are not such enthusiastic fans of the supposedly oven-ready new ideology of full inclusion – or indeed the concept of mandated inclusion at all. While the concept of everyone always harmoniously learning together sounds rosy, what of those children in inclusive classrooms who, year after year, are learning nothing?

Into this category would fall:

- students with or without disability who are also intellectually gifted - who are learning nothing, not because they are incapable of learning, but rather because they have learned it all several years before, and
- students with or without disability who find that their classrooms are now too noisy and chaotic, as a result of exceedingly disruptive behaviour on the part of a few students (whether such behaviour stems from disability or other cause), and who are thus increasingly asking to be home-schooled: they now perceive of the classroom as a potentially dangerous place, where they have actually been instructed to rehearse strategies to avoid being hit by a flying chair in the event that another child has an unexpected 'meltdown'.

Said one little girl on arriving home from school one day:

> *Mommy today I fell down at recess and cut my knee and it really hurt and there was blood running all down my leg, right down to my sock. I started to cry, but Mrs [Teacher] said I wasn't allowed to cry because* [redacted] *doesn't like it when any of us cry, and it might cause him to have another big meltdown and start throwing things again. She also said to tell you to take off the bandage she stuck on, and wash the cut really well. She said she didn't have time to do that because it would need water and, if she went to get some, there would be no one to watch Timmy and make sure he didn't hurt anyone. So I was wondering, now that I'm home, would it be ok if I have a little cry?*

Would anyone argue that [redacted] in the above vignette doesn't deserve to have his needs met at school? No, of course not.

But equally, could the little girl with the cut knee be said to be 'benefitting' from having [redacted] in her class?

Is it justifiable to use this little girl and others like her to advance an ideology of indeterminate value based on the aspirations of international conventions which are not enshrined in domestic law in Australia?

Inclusion sceptics quietly complain to me that teachers employed in all sectors do not dare to openly criticise full and universal inclusion at their schools or elsewhere, except in the most veiled of ways, eg on the basis of ‘not enough extra funding for students with disability’.

Teachers explain to me that they say nothing year after year because they are prohibited by their professional codes of conduct from criticising in public any aspect of the teaching profession or their education department or diocese. It is worrying that teachers do not feel free to express their views about a practice and ideology which does, or will, so intimately affect them.

Those academics who privately would wish to question the wisdom of full inclusion and problematise some of the seemingly unsubstantiated pro-inclusion views claim they are keen to avoid condemnation from fellow academics, especially those who already sport a string of publications consistently and enthusiastically favouring full inclusion for everyone, always and regardless of effects on other students. Sceptics tell me that therein lies one of the reasons that the number of published studies critiquing full inclusion has fallen off in recent years.

Specifically, I am told that the following kinds of research are now de facto prohibited in our universities and, if they manage to be conducted at all, will find no place in academic journals:

- research showing that students *without* disability do NOT indeed always benefit from full inclusion and can indeed be harmed, in terms of learning progress in English and Math, when compared to controls; or
- research showing that no classroom teacher, no matter how talented and well intentioned, can be quickly skilled up to do the specialised work of psychologists, language pathologists, occupational therapists and special educators; or
- research on the views of those parents who claim to have, against their best inclinations, been ‘bullied’ by some inclusion advocacy associations into enrolling their child with disability in a mainstream local school, but have subsequently removed the child and chosen instead a school for specific purposes, where the child has ultimately enjoyed far greater academic and social success and wellbeing.

There is currently too much disharmony within the disability advocacy community between the radical, politically correct full inclusion proponents and those who favour a more measured and nuanced approach.

The latter group’s experience in expressing any kind of doubt or question about the wisdom of full inclusion during government consultation meetings and various public events is emblematic of the fiercely held views evidenced by some in the disability space. I am currently consulting to government entities (on a part-time basis as a volunteer, not a lawyer or a business) in nine other capacities on a variety of internal inquiries, reviews and committees to do with students with disability, disability funding, disability legislation, curriculum revision, teacher professional development, education department leadership, gifted education and select-entry classes and schools. I and my colleagues do not experience this kind of strident belligerence or denigration from other participants in any of those nine contexts. In the inclusion context, our unpopular and politically incorrect voices used to be just ignored. Now, it seems, they must be silenced.

In short, anyone now daring to speak out against the politically accepted inclusion script risks being accused of wanting every child with any kind of disability to be relegated to nineteenth-century-like institutions – and educationally forgotten.

I am sure that the Review will receive many more submissions in *favour* of full inclusion than doubting it. I submit that this may be accounted for by the frosty reception awaiting anyone who publicly dares to so doubt it, as outlined above. Those who have asked me to raise the inclusion issue in my submission have done so because they claim to be afraid to do that themselves – especially in the case of anyone who perceives that their continuing employment and promotion depend on not being seen to be an 'inclusion doubter'.

Differentiation

In the face of the issues raised above, the standard glib answer is of course that all teachers must now simply learn to 'differentiate' the curriculum in mixed-ability classrooms to meet the needs of *all* students, including those with the full range of abilities and disabilities. And yes, there are some teachers who are trying very hard to do just that.

Yet what teachers tell me is that **differentiation is just too hard.** Teachers soon tire of being advised that they can comply with the Legislation simply by employing differentiation.

In my experience, countless teachers at the end of a professional development session on differentiation have been heard to mutter, "Well if they really want me to do all *that*, then they'll have to pay me more. I won't do it, and they can't make me." or "I went to some PD on differentiation, and even *they* admitted that it won't work unless classes are already ability-grouped. The gap in most classrooms now between the most advanced and the least advanced is just too huge for teachers."

The 2020 final report of the independent Review of the NSW Curriculum https://nswcurriculumreview.nesa.nsw.edu.au/pdfs/phase-3/final-report/NSW_Curriculum_Review_Final_Report.pdf makes this point on page 6:

> *In each year of school, the most advanced ten per cent of students are at least* ***five to six years*** *ahead of the least advanced ten per cent of students, and this appears to be unchanged across the years of school. And there is some evidence that, in mathematics, students become more varied in their levels of knowledge and skill the longer they are in school.*

This finding is taken up also on pages 54, 75 and 89 of the same report.

If this is correct, and the Review's findings are implemented, then even without considering all the extra needs of students with disability, teachers will have to differentiate to an even greater extent as students work at varying paces towards achieving minimum attainment levels. This is because teachers will have to deliver lessons to students working on five or six different syllabi within the same classroom, depending on each child's progress.

So for example, if there are five or six Year levels in each classroom, each teacher of, say, a Year 4 class could be simultaneously and singlehandedly teaching their differing students a variety of levels of different curriculum designed for students in Years 1, 2, 3, 4, 5 and 6 – all the while:

- regularly keeping track of who is doing what level, and how well they are progressing, and then
- deciding when each child has mastered enough of the mandated material to move on to a higher syllabus, while still sitting in the same age-grouped classroom.

And primary teachers must do all this all day, every day for each subject. Teachers become individual private tutors for each and every child.

How could *any* teacher, no matter how well trained, energetic and well intentioned, be reasonably expected, without an array of teacher aides, to teach so many different topics at the same time in the same mixed-ability classroom encompassing children who all happened to be born in the same calendar year, but who are working at five or six different Year levels? How could that teacher at the same time continually track each child's progress in each subject, and move some up to higher syllabi? And document all of that?

Further, while a sole unsupported and unmentored classroom teacher is in the process of introducing new material relating to *one* of the six syllabi being studied in the age-grouped classroom, who is looking after all the other students who are supposed to be focussing on the other five syllabi – especially those who, because of disability or otherwise, are manifesting disruptive or even dangerous behaviour? And what about those quiet students with impeccable behaviour who for whatever reason just disengage and refuse to independently work on their assigned syllabi, and instead spend their time staring out the window?

One Year 7 English teacher at a State school who was teaching *Romeo and Juliet* found that she had three age-appropriate, English native speakers in her class unable to read the play (even in a simplified, modern-language version). One of those students had a professionally measured reading comprehension level equal to that of a Year 1 student, the second a Year 2 student, and the third a Year 3 student. The teacher asked if those three students could be removed from her Year 7 classroom to participate in some form of evidence-based remedial intervention in reading comprehension, instead of being forced to study Shakespeare. She was told that such a step would constitute 'segregating' those three students from their similar-age cohort, might hurt their feelings, and as such would be 'against the law'.

The teacher was also told that, according to current department of education policy, it was her job to 'differentiate' *Romeo and Juliet* in three ways, so that it would be equally accessible to a child in Year 1, Year 2 or Year 3. Otherwise, those three students' parents might 'complain'.

Realistically, how many parents would 'complain' if told that their child was significantly behind in reading comprehension, and was being offered extra free lessons at school in order to catch up? Would any adult realistically respond, "But what if my child doesn't learn about *Romeo and Juliet*? That's discrimination!"

Yet a fear that some parents may complain seems to be a significant factor which is driving some recent in-school decisions to prioritise inclusion above all other considerations. One teacher confided to me that parents of children with disability are now such strong advocates that it is just 'easier' to capitulate in the face of any and all demands than to 'stand up to it'.

And it is acknowledged that that teacher may have a point. On the other side of the argument, I do receive complaints from teachers that some parents insist that, instead of offering their child remedial intervention (ie teaching them to read), schools must now ensure that the child always has exactly the same curriculum as everyone else in the room 'because that's the law!' So if that curriculum happens to be Macbeth, so be it – even if one child in that high school class is reading at the age of a 5-year-old.

This is actually corroborated by what some parents tell me. The parents themselves would indeed have initially been happy for their children to be removed from the classroom to receive remedial intervention for the disability (ie, to be taught to read), but the inclusion advocacy associations are coaching parents to always insist instead on 'same classroom, same teacher, same schoolwork' – no matter how inappropriate and inaccessible that work may be for a given child.

See in this connection a case in which a mother filed a complaint with the AHRC on the grounds that her child with Down Syndrome was not being taught the same curriculum as others in her Year 9 classroom, but instead was being offered work which would have been suitable for a much younger child: https://www.abc.net.au/news/2020-07-22/student-with-down-syndrome-has-school-enrolment-cancelled/12478980

Further, consider the high school Macbeth classroom child with the reading age of 5 (mentioned above). Would that child really enjoy sitting in a classroom listening to their classmates discussing something called Macbeth, wondering, "What is this all about, and why can't I read it the way all the other kids do?"

Into my Inbox virtually every day file teachers who have been trained at university for years to do what some have called 'bowling down the middle' and who are now being asked to do something radically different – supposedly in classrooms with the same number of similar-age children and the same number of teachers (ie, one).

No doctor, dentist, lawyer, engineer or architect is expected to do this. Lawyers generally deal with one client at a time and, while we are meeting with one client, we do not have to be constantly looking over that client's shoulder to ensure that all our other clients are not throwing chairs at each other. If other professions can train students at university, more or less, for what they will realistically be expected to do on graduation, why should teaching be any different?

Accordingly, I am no longer surprised when teachers increasingly complain to me privately that it is impossible to competently meet the needs of everyone whom they are now expected to teach, either because teachers have never been properly trained in how to do that, or because the irregular, bits-and-pieces differentiation training which they have indeed received is simply too difficult to implement in a classroom with such a wide range of diversity.

Media suggest that nearly half of graduate teachers quit teaching within five years, for example: http://www.abc.net.au/radionational/programs/lifematters/keeping-teachers-in-our-schools/8243714 . Perhaps one reason is that, as mentioned by a participant in the linked radio interview (circa 21:00), 'differentiation' means that 'every problem in society should be solved by a teacher in a school', but in reality 'that's never going to happen'.

As noted in **Part 4.2.2** above, schools are not adequately resourced when it comes to supporting students with disability in mixed-ability classrooms, *a fortiori* in the current climate:

- where the concept of full inclusion is being universally applauded and haphazardly implemented (but not fully resourced) in schools in general, and

- when teachers do not receive mandatory training in modifying their daily classroom practices in the very challenging fashion demanded by the 'differentiation' model.

Teachers understandably argue privately that, if the resources which are known to be required are not available and provided, it is unrealistic for the community to expect that unsupported mainstream teachers can adequately meet the needs of all children with disability, especially in the case of:

- children with multiple disabilities and complex needs, or
- children with invisible disability but no documented professional diagnoses, or
- children with disability who are not actually failing, or
- children with disability for whom an individualised education plan or personalised learning plan (however called) must be devised, implemented, evaluated and continually updated.

The 'inclusion' excuse

All of which brings me back to what parents are increasingly reporting to me as the so-called **'inclusion excuse'**:

> *We can't provide remedial intervention or disability adjustments for your gifted child with 'mild' disability because they are not 'disabled enough'. Sure, he can't read or count or keep up with the class, but at least he is quiet and behaviourally compliant, and that is all I care about.*
>
> *I am told now that I must devote the majority of my attention to this child over here with severe physical or intellectual disability, and this other child over here with severe behaviour challenges, and so that's what I am going to do. All we really have time for these days is students with severe and serious disability who are increasingly being represented in mainstream classrooms under the ideology of 'inclusion'. We watch as every year more and more of these very needy students are coming out of schools for specific purposes and over to us.*
>
> *But the department of education pays my mortgage, and I dearly need for that to continue to happen, so I will do whatever I'm told, and always deal with students with catastrophic disability first.*

Parents report that they receive no (or very unpleasant…) reactions from school officials and education department representatives when they draw attention to their concerns that more and more children with grave and time-demanding disability are now being channelled into mainstream mixed-ability classes and are being left to cope there without individual and specialised support. Some parents claim that they have been made to feel 'ashamed' to have had the audacity to advocate for their own child who is "really not all that disabled anyway."

To be clear – such parents are NOT asserting that children with severe disability should *not* be having their needs addressed, educationally and wellbeing-wise, by anyone, anywhere, ever. They are NOT arguing for a solution which would see all children with disordered behaviour (however caused) relegated to nineteenth century institutions and educationally forgotten. Such common accusations are unwarranted and, I submit, insulting to parents who are merely pointing to their own concerns.

What these parents *are* looking for is a solution that would entail BOTH addressing the needs of the child with the behaviour issues AND letting all the other students calmly get on with their learning. Parents wonder how both those objectives can be ever achieved by one untrained, unsupported and unmentored teacher in a mixed-ability mainstream classroom where, as the NSW Masters Review found, children are working at 5 or 6 different levels. Differentiating for that degree of diversity is already enough of a challenge for teachers. Factoring chronic disruptive behaviour into the equation may just see the average number of years that new teachers remain in education drop even below its current scandalous five.

Some parents suggest that perhaps 'full inclusion' might 'work' if there could be *several* teachers in each classroom, some with extra specialised training in the complex needs of some of the students in those classrooms. Parents are being told by educators (now, but even well before the current COVID crisis) that that is something which is not going to be happening any time soon, because it would cost twice or three times as much in teacher salaries.

All of which makes teachers and parents conclude that **'inclusion' is simply a painless and cheap way of paying lip-service to a patent need which otherwise will not go away.**

As alluded to above, some parents of non-gifted children with disability claim also that they are being strongly and relentlessly encouraged by some disability support and advocacy organisations to categorically insist on sending their child to a local mainstream school, without even first considering or becoming knowledgeable about the possible benefits of a so-called 'special school' or 'school for specific purposes' or a school devoted to addressing the very disability being experienced by that child (eg, deaf or blind).

One mother mentioned to me that when she contacted an advocacy association, it was the first time she had ever spoken to anyone who sounded as if they truly understood her child and his challenges. She was delighted! But there had been a subtext: "If you don't do as I say, and discontinue your research into special schools, I won't help you anymore. You must send him to your local mainstream school, even if they don't want him or claim they can't teach him."

Parents who wish to be well regarded (and thus implicitly, worthy of advocacy assistance) soon learn that their range of choices has just shrunk.

Such parents report further that the 'inclusion excuse' (ie, "I have to look after those in the 'plenty who are doing worse' category before attending to your child's disabilities") is often followed by a suggestion such as, "If you really want your child with dyslexia to learn to read, why not enrol him in [name of commercial, expensive edu-business] down the road. I'm sure they'll have time to give him the attention he needs."

One mother was reportedly told by her school principal:

> "***Well if you really wanted your child with dyslexia to learn to read, you should have sent him to a private school,*** *because State schools are now so busy solving all of society's problems and addressing all of its inequities and worrying about everyone's 'wellbeing', we no longer have time to do the 'old stuff' like teaching reading!*
>
> *In recent years, I have had to tell my teachers that from now on 'headquarters' has decreed that they must include in their lesson plans driver education, pedestrian safety, drug education, dealing with bullies, media literacy, financial literacy, growing vegetables, sleep hygiene, cyber safety, bushfire safety, nutrition, obesity, smoking, personal hygiene, safe partying, caring for pets, table manners and how to use cutlery. Children used to learn those things at home, but it seems as if children no longer have parents. So now it's our job.*
>
> *In any event, all I can tell you is that if the only disability your child has is mere dyslexia, then we can't help him here. But if you'd like to allege severe trauma or disadvantage or low SES or minority population or precarious wellbeing or other inequity, then you've come to the right place, because that's what we do here now!*

Private tutoring and private schools are terrific solutions of course for families with a money tree in the backyard – but perhaps not for others who have actually sent their child to a State school so that the child can learn to read.

4.2.6 "But nothing before Year 12 '*counts*' anyway, so why bother?"

Sometimes when parents request disability adjustments for in-school activities and internal assessments and tests, they are met with the excuse that it's really not worth the trouble because, "Your child is only little and nothing before Year 12 'counts' for anything anyway."

While perhaps technically correct in terms of what directly goes towards the calculation of an ATAR, this excuse ignores the fact that disability adjustments should be (and are) available for NAPLAN, ICAS, selective schools entrance tests and scholarship tests, all of whose results may be, and regularly are being, used over the years to make critical decisions regarding the child's whole future.

In addition, it is wise to have unambiguous precedents extending as far back as possible, because any disability first documented in late high school for purposes of Year 12 disability adjustments may be regarded with suspicion as the attempt of an overly ambitious parent to fabricate a disability and thus to secure an 'advantage' for their child.

Further and more importantly, by the time that they reach Year 12, a child has already formed a clear view of their academic ability and academic self-efficacy. A child who has spent the last 11 years failing at school because they have been denied disability adjustments is invariably so discouraged from years of underachieving that they have probably already given up, decided they are 'stupid', or developed behavioural challenges.

How difficult would it be then to assure such as child that, once they eventually get extra time and a keyboard for their exams, they'll finally be able to show all that they know, and will consequently achieve the good grades they should have been enjoying all along?

What about all the years when they have been disengaged, not learning, and simply waiting get to be old enough to quit? How hard would *that* achievement gap be to fill?

In that situation, it is unlikely that the child's self-esteem will magically reappear in Year 12 if the disability adjustments are in fact finally approved for the Year 12 finals. When a pattern of chronic academic achievement has been allowed to become established, it is improbable that providing adjustments at the end of Year 12 will restore the child to the position they would have been in, had they been receiving the adjustments all along.

Introducing disability adjustments only at the eleventh hour for something which 'counts' is as pointless as taking away a vision-

impaired child's glasses in Year 1 and giving them back in Term 3 of Year 12 just in time for the final exams.

4.2.7 "But he's had adjustments *before*, and now he's improving, or now he doesn't want them anymore"

Children with disability whose adjustments have been approved at first instance often report that they live in constant fear that the adjustments will be arbitrarily withdrawn later on – for example:

- if the child's grades begin to improve, or
- if the child does not always use the full extent of the adjustments for each and every test (eg, not always using or appearing to use every minute of approved extra time, or every rest break, or electing to print by hand very short answers or mathematical equations in a test for which typing on a keyboard has been approved), or
- if occasionally the child refuses an offer of disability adjustments seemingly for no reason.

A blanket decision to unilaterally discontinue adjustments in any such circumstances is unwarranted.

Sometimes adjustments are arbitrarily withdrawn or refused even when a child has previously regularly used them for tests such as NAPLAN or ICAS, especially in the case of a child who is patently clever and who begins to receive better grades or is already achieving well at school (see **Part 4.2.4** above).

In one case, an application to a statutory authority for the Year 12 final exams was refused on the grounds that the child had had disability adjustments for the final exams in Year 10 and had done quite well on those exams. Accordingly, it was argued, his permanent disability must have 'cleared up', and so he could not have the adjustments again for the Year 12 final exams (ie, "If a child is doing well with adjustments, then clearly the adjustments must be 'working' – so let's take them away from him.").

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf , made in the context of disability discrimination legislation similar to Australia's) provide expressly, with respect to disability adjustments (therein called 'testing accommodations'), that

> *Proof of past testing accommodations in similar test settings is generally sufficient to support a request for the same testing accommodations…* (page 5).

Under the polices of government authorities in Australia, however, parents must invariably begin all over again for the Year 12 final exams, even if they have inches of documentary proof that the child has been using a previously approved disability adjustment for the past 11 years.

Similarly, all children, including even children *without* disability, will experience varying performance on tests and exams, depending perhaps on the day, on the subject being tested, or on a variety of environmental factors. Students with disability are no different.

Accordingly, if an adjustment has been approved to address for example an anxiety disorder, it takes no great insight to understand that the extent of the effects of that anxiety may in fact vary from day to day. Sometimes the child may need the full extent of each adjustment, and sometimes not. Sometimes disabilities are episodic, and sometimes not.

A child who on occasion chooses to not use the full extent of their approved extra time or rest breaks should not thereby be taken to be indicating that they never needed those adjustments in the first place and will not ever need them again.

Especially in the case of an anxiety disorder, part of the purpose of the approved extra time is simply to keep the lid on the anxiety which invariably surfaces at the beginning of every exam – just KNOWING at the beginning that the child will have enough time to finish is often the key. Nevertheless, some government representatives have been heard to say in public that extra time will *never* be granted for children with a diagnosed anxiety disorder, as it would just mean that the child would stay anxious for longer!

There is absolutely no legislatively-imposed duty to always use every last bit of every adjustment – to use every last minute of extra time or rest breaks - and the child with disability is under no legislative duty to sit in their seat once finished and pretend that they’re still working till the end of the extra time – in fact, their approved extra time is theirs to do with as they wish. There is nothing in the Legislation stipulating that a disability adjustment ceases to be ‘reasonable’ or necessary if it is not completely used up on every single occasion.

In similar vein, some children struggle with the fact that they have been diagnosed with a disability in the first place, and crumble in the face of the consequent stigma and embarrassment which they perceive logically follow from that fact. When loudly asked by a teacher in the presence of their peers, “Do you want your extra time today?”, it is little wonder that some children with disability will sometimes find that, instead of experiencing the ‘shame’ which comes with being singled out for what others may regard as ‘special treatment’, it is just easier to mumble, “No”.

And sometimes it is actually a symptom of the disability in the first place that the child will not want to draw attention to themselves by continually having to remind teachers about the adjustments which have been approved and to which they are entitled. Said one teacher, "He stopped reminding me about the extra time, so I just assumed that he'd got over wanting it."

Some parents have had to expressly forbid in writing a teacher from referring to a child's disability or disability adjustments within the hearing of other children. Why should parents find it necessary to lodge such a formal 'speak only to me, not my child' admonition with a school?

4.2.8 "But it's not allowed by the '*rules*' on a government website"

It is remarkable that so many pages on the websites of government authorities start by directing a perfunctory nod in the direction of the Legislation, and warning that schools must always abide by their legislative obligations, and then go on to present a haphazard, self-serving policy which in so many respects falls short of doing precisely that.

Sometimes, after consulting such websites, schools claim that they are 'not allowed' to provide disability adjustments because all schools are governed by whatever a government department or government authority posts on its website with respect to:

- what will and will not be 'allowed' in the way of adjustments for *everyone and anyone in all circumstances,* and
- which kinds of disabilities will and won't qualify in the context of specified named tests (such as NAPLAN, or select-entry classes and schools, or the Year 12 final exams).

The lists of 'rules' or 'guidelines' or 'protocols' or 'scenarios' [however called] are usually presented on websites as if they are enforceable and inalienable, when in fact they are *not law* but merely bureaucrats' self-serving, capricious *policy*. The lofty pronouncements are attempts by some government authorities to unilaterally circumscribe, narrow or limit what could be a 'reasonable' adjustment under the Legislation.

These website proclamations can be (and mysteriously invariably are…) changed overnight with the click of a public servant's mouse. Further, they are always challengeable by students and parents, and in my experience are regularly not upheld or obeyed on appeal, and are routinely overridden by the recommendations of an outside medical or allied health professional who supplies cogent evidence in support.

Experience suggests that few schools and teachers (and even medical professionals) are aware of this.

In drafting and publishing the so-called 'rules' for the approval of disability adjustments for tests and exams, the government authority is itself making up its policy and setting its own secret benchmarks (for example in NSW, https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID= page7, para 5), and then, with no transparency, deciding who is and isn't impaired enough to fall beneath them. Such authorities are effectively marking their own homework.

For example, parents have reported that some such website pronouncements include 'rules' such as:

- a child must be able to prove that they are already regularly using a given adjustment in the classroom before it will be approved for a State test
- adjustments are designed to help only those children who would otherwise be completely *prevented* from accessing the test or reading the questions or communicating their responses (eg, blind, no fingers, etc)
- the child must prove that they are unable to use one kind of disability adjustment before they will be allowed to have a different kind (usually in the context of being required to fail when dictating to a scribe before being given permission to type answers on a keyboard – see further, with respect to NSW, **Part 7.5.2** below)
- a diagnosis of disability X will justify the provision of 5 minutes' extra time per half hour but never any more, regardless of level of impairment occasioned by disability X.

In fact the Legislation says nothing about any of the 4 so-called 'rules' listed above: they are policy but not law.

Of course it may be that past regular use of a given disability adjustment in the classroom may constitute evidence of its continuing necessity, but such evidence would be persuasive rather than probative. There are many reasons why a child may be applying for a *new* disability adjustment for a State test – an adjustment which they have not had to use before. For example, one teacher reported:

> *I had a child in my class with a professional's recommendation for extra time for NAPLAN, and I was asked if this was an adjustment*

> *which that child usually used in my classroom. I had to tick a box saying no – but I was not allowed to add the explanation: that I never give timed tests in my classroom, and everyone is always allowed to have as much time as they wish - so no, this girl had never had 'extra' time – but then neither had anyone else.*

The arbitrary website 'rule' (about proving past use in the classroom in order to qualify for use for NAPLAN) had operated to ensure that this girl with disability was not allowed to attempt her NAPLAN tests **on the same basis** as a child without her disability.

In particular, the information which some government authorities post on their websites with respect to disability adjustments for Year 12 final exams is replete with rules and regulations and admonitions. This is discussed in greater detail in **Part 7.5** below.

When liaising with parents whose children are applying for disability adjustments for Year 12 final exams, some schools claim that they are powerless in the face of an omnipotent government authority, and that they are unquestionably governed by whatever that authority chooses to post on its website with respect to what will and will not be 'allowed' in the way of adjustments and which kinds of disabilities will and won't qualify for them.

For example, the government authority's website in NSW includes 'rules' such as [*emphasis* mine]:

- Disability adjustments are "designed to help students who couldn't otherwise make a *fair attempt* to show what they know in an exam room." http://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions

- Adjustments are available only for "a disability that would, in a normal examination situation, *prevent* the student from reading the examination questions and/or communicating a response." http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.htm

As noted above, the *Standards* themselves say nothing about any of the above 'rules' – which are merely policy and not law. Accordingly, schools are not bound by the so-called 'rules'.

Specifically, the *Standards* say nothing about anyone making or not making a 'fair attempt' or being 'prevented' from doing anything.

The test of 'reasonableness'

To comply with the *Standards*, schools and government authorities are to implement, inter alia, measures which ensure that "the assessment procedures and methodologies…are *adapted* to enable the student to demonstrate the knowledge, skills or competencies being assessed." (*Standards* s. 6.3(f) [*emphasis* mine]).

Under the Legislation, disability adjustments must be 'reasonable' (*Standards* ss. 3.4 and 6.2 (2)). As a matter of practicality, determining whether an adjustment is 'reasonable' for a particular student can be a complex process.

It is a matter of:

- looking at not only the professionally diagnosed disability, but also the level of impairment occasioned by it, in light of the child's professionally documented evidence, and
- asking how the child is affected by their disability in the exam context, and what would be a 'reasonable' adjustment for *THIS* child with *THIS* disability and *THIS* level of impairment for *THIS* type of task of *THIS* length, and
- asking if the proposed adjustment would allow the child to participate in their education (including assessment tasks) ***on the same basis*** as a child *without* this child's disability (*Standards* ss. 3.3 (a) and 6.2 (1)).

The legislative test is *NOT* whether a statutory authority has unilaterally made up its own policy and rules, and placed these on a website which purports to list which adjustments are, and are not, available (or 'possible' – see below). An education department or a statutory authority calling a given adjustment 'reasonable' on its website is neither persuasive nor probative.

What is 'reasonable' will be a question of fact based on the evidence in each case (*Standards* s. 3.4). It is not a matter of mere assertion by a parent that a desired adjustment is indeed reasonable, or a matter of mere assertion by a government authority that it isn't.

Crucial to the strength and probative value of the evidence submitted in the applications with respect to what is 'reasonable' are the reports authored by highly credentialed medical and allied health professionals, not only diagnosing the disability, but also measuring and quantifying the level of functional impairment occasioned by it, and making specific and detailed recommendations for *THIS* child with *THIS* disability and *THIS* level of impairment.

The number of times that a government authority will initially reject or overrule the recommendations of such professionals is simply astounding – especially when on appeal or after an AHRC conciliation conference, the professionals' recommendations usually end up being accepted after all (see above) .

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf made in the context of disability discrimination legislation similar to Australia's) provide expressly, with respect to disability adjustments (therein called 'testing accommodations') [**emphasis** mine]:

> *Testing entities **should defer to documentation from a qualified professional** who has made an individualized assessment of the candidate that supports the need for the requested testing accommodations.* (page 7)

A government's policy of NOT doing that reflects the sometimes thinly veiled suspicions held by its representatives that the opinions of outside professionals cannot be trusted, either because the professionals are incompetent, or because some professionals are supposedly too influenced by the demands of their fee-paying parent-clients, and are consequently forced to deceitfully document a disability which does not in fact exist, as discussed in **Part 4.2.3** above.

Listing of so-called 'possible' disability adjustments on a website

So many parents report that their children's schools claim to be 'scared off' by all the blanket 'rules' and prohibitions which appear on government websites. Some schools have said that they won't even consider applying for anything which is not expressly listed within a government website's 'rules', for fear of 'getting in trouble'. Why would so many schools feel that they have to be so afraid of a government authority?

In the face of such fears, some schools adhere strictly to the so-called 'rules' or 'protocols' posted on a government website, while others adopt a more cavalier attitude, and apply for exactly whatever adjustments the diagnosing professional has recommended, regardless of whether those adjustments are expressly listed as being 'available' or 'possible' on a website.

Government websites listing 'rules' with respect to 'what is available for what', while an understandable attempt to introduce some form of consistency, actually do not result in uniformity because the Legislation itself does not establish a system of merely listing all the possible disabilities and dictating, "autism gets only YXZ, and ADHD gets only ABC, and dysgraphia gets only PQR, etc."

Adjustments are not tied to the specific disability which they are being recommended to address. It is not a case of selecting a disability adjustment from a pre-determined menu. There are no recognised or prescribed ‘dysgraphia adjustments’ or ‘autism adjustments’ stipulated in the Legislation.

And yet, on the NSW website for example (https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID= page 4), we see this list:

> "…. *students with a:*
>
> - *learning disability may use reader or writer*
> - *medical disability may access toilet breaks or use adapted furniture*
> - *vision disability may use braille or large-print papers*
> - *hearing disability may use an oral or sign interpreter"*

Blanket website assertions that XYZ adjustment (eg, 5 minutes’ extra time per half hour) is available for ABC disability actually are not enforceable because there is no legislative provision to match a menu of disabilities against a menu of adjustments, and come up with 5 minutes as the appropriate adjustment for everyone.

It is thus not a question of a government authority simply unilaterally decreeing which adjustments will or won’t be ‘available’, or which may possibly be approved, but rather a question of suggesting to parents that their professionals may wish to consider which adjustments to recommend, in light of the child’s disability and the professionally measured level of impairment occasioned by it. As noted above, it is a question of asking what would be a *reasonable* adjustment for *THIS* child with *THIS* disability and *THIS* level of impairment for *THIS* type of exam of *THIS* length.

In summary, just as there are no adjustments which will always be ‘reasonable’ for all students with disability in all circumstances, so there can exist no master list entitled ‘reasonable adjustments’ or ‘possible adjustments’ if the word ‘possible’ in such contexts is interpreted as meaning ‘allowable’ rather than ‘some examples of’.

Some jurisdictions’ policies appear to have failed to appreciate this (see, for example the new Queensland policy https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara para 6.4.4).

Despite the legislative test of ‘reasonable’, and the fact that the nature of disability adjustments is supposed to be a matter for consultation with parents (discussed in **Part 4.5** below), the Queensland policy https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara blatantly purports to prescribe the nature of some of the so-called ‘possible’ adjustments which the government authority is prepared to offer in some circumstances.

For example, the amount of time prescribed for extra exam time and rest breaks in the Queensland policy https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara (paras 6.4.1 and 6.4.4) is said to be 5 minutes per half hour. There is in the policy no express provision for this to be decreased or increased, depending on the severity of the functional impact of the disability on the applicant child.

Of course the quantum of extra time needed will be a question of fact based on the evidence in each case. Several children with the same diagnosis may have very differing needs in an exam situation. They may require different adjustments or different levels or degrees of the same adjustment.

The Legislation itself says nothing whatsoever about 5 minutes or any other number of minutes of extra time. The Legislation speaks in terms of what would be ‘reasonable’. Perhaps for some students with disability, 5 minutes’ extra time would be reasonable, but for others, it would be alarmingly laughable.

Consider two children with professionally diagnosed and documented dyslexia and professionally measured reading speeds: one reads ½ as fast as a child without dyslexia, and the other ¼ as fast. Should they both be granted the same amount of 5 minutes per half hour extra reading time on an exam? What would be ‘reasonable’ for each? Of course, the answer to that question varies with the child. It depends not on the diagnosis, but rather on the level of impairment occasioned by it. How much extra time does *THIS* child need in order to read as fast as a child *without* dyslexia*.*

It is important for parents to know that professionals also are not bound by the lists of so-called ‘possible’ disability adjustments which appear on some government websites. Professionals are free to recommend whatever adjustments they feel a child needs. Applicants must know that are free to apply for whatever they can produce cogent evidence in support of. Adjustments needn’t fit neatly within categories listed on a government website.

It needs to be made very clear on government websites that whatever is suggested there is **not exhaustive.** Progress in this regard has been made in recent years in some jurisdictions.

To its credit, the NSW website does now begin its table of 'what is available for what' with a proviso that the list is not exhaustive https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID= (page 13), but still the reader could be forgiven for assuming from the way that the table is presented that it is really saying, "Here are our rules."

Similarly, the Queensland website goes further and takes the precaution of specifying in many places that the adjustments which it lists are 'not exhaustive', for example:

- "The following table summarises possible [adjustments]. It is not exhaustive. Each individual student's circumstances should be considered on a 'case by case' basis," - para 6.4.4 here https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara/6.4-reporting-approving
- "The list of possible [adjustments] is not exhaustive and depends on a student's individual circumstances." - para 6.4.5 here https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara/6.4-reporting-approving
- "...this section does not include examples of every possible circumstance for [adjustments]" – third para here https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara
- "[adjustments] are applied on a case-by-case basis with both the individual student needs and the assessment technique or task taken into consideration." – para 6.1 here https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara/6.1-principles
- the insertion of a final category in the table of possible adjustments, called "Other" - at the end of para 4.4 here https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara/6.4-reporting-approving

All those provisos make it clear that the Queensland policy contains examples only, and other adjustments can be applied for without fear of being told, "Well that's not on the QCAA table, so NO!" Nevertheless, I am still hearing from parents excuses such as that very one: "What you are applying for is not on the website table, so we will not progress it or it might look bad for our school."

I submit that anything on government websites purporting to impose a blanket prohibition on any specific disability adjustment for all applicants and/or in all circumstances, regardless of the severity of disability or level of impairment, may arguably be unlawful under s. 44(1) of the *DDA*, in that such a website notice:

- would arguably constitute an 'advertisement' for purposes of s. 44(2), and
- "could reasonably be understood as indicating an intention…to do an act that is unlawful under a provision of Division…2" of Part 2 of the *DDA*, viz. s. 22(2A).

Whose 'decision' will it be?

Some schools are told by education providers that the decision as to what is 'reasonable' always rests with the school. They are not however told that the school must still be absolutely scrupulous in its determination of what is 'reasonable' and, most importantly, that its 'decision' must be made after consultation with the child or the parents, and is always open to challenge.

Neither are they told that:

- prima facie an adjustment *IS* 'reasonable' "unless making the adjustment would impose an unjustifiable hardship" on the education provider (*DDA*, s. 4(1)), and

- "the burden of proving that something would impose unjustifiable hardship lies" with the education provider (*DDA*, s. 11(2)). Mere subjective assertion is not sufficient, and a parent is not required to disprove the assertion.

Although the Queensland policy's website says all the right things about its lists, and takes the precaution of specifying more than once that they are 'not exhaustive' as noted above, still the website displays a lack of understanding of the true import of those provisos by leaving the overwhelming general impression that: "These are our rules, we make the decisions, and you must obey."

In particular, the policy https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara
repeatedly refers to what it calls 'decisions' which are to be made by:

- schools (eg paras 6.1, 6.3.1, 6 4.1 and 6.4.6), or
- principals (eg para 6.4.1), or
- QCAA (eg para 6.3.2).

Similarly the NSW website presents a flowchart (https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID= page 12) which makes it clear that the 'decisions' are seen as being the statutory authority's alone.

Yet, under the Legislation, such 'decisions' are not a school's or a government authority's to unilaterally make.

Rather, as described above, the legislative test is, "What would be a *reasonable* adjustment in these circumstances?"

The Legislation specifies that answering this question is a matter for consultation with the student and their parents (see **Part 4.5** below). It is a matter of negotiation between the parties in light of the strength and quantum of the evidence submitted, not a matter for simple assertion by just one of them.

No one party single-handedly does the 'deciding'.

The Queensland policy https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara actually does refer to 'consultation' with parents (para 6.1) but then does not mention or expand upon that requirement again. Further, there are many provisions in the Policy containing lists of what schools must do. These further tend to leave the impression that it is always the school which is the final decision maker. And it is not.

The 'no guarantee' provision

Some jurisdictions' disability adjustments policies contain an ominous express warning that, just because a student may have been using a particular adjustment since Year 1, and even throughout the course of Year 11 for senior secondary assessments which 'count', still there is no guarantee that that adjustment will be granted for assessment at the end of Year 12.

In Queensland the 'no guarantee' warning is enclosed in a prose paragraph in para 6.4.2 here: https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook/6-aara, while in NSW it is both mentioned in prose on page 8, para 10, and highlighted in its own freestanding box on page 5 here: https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID=

Experience suggests that a student who, because of disability, has never been able to learn to handwrite (for example), and has used a keyboard since Kindergarten, is thus required to sit their Year 12 exams in handwriting if a keyboard is not ultimately approved by a government authority. In one case, this exact ruling was reportedly appealed almost a dozen times with copious amounts of professional evidence attesting to the fact that the child could not, because of disability, learn to handwrite, and still the decision was not reversed.

I wish I could say that this family was the only one I have ever supported where that decision prompted the child to then threaten to commit suicide - but it is not. In another case, a disability adjustment rejection-related suicide threat prompted parents to move their child's bed into the parents' bedroom until the end of the Year 12 exams, so that the parents could take turns staying awake to watch the child all night.

In some jurisdictions, a 'no guarantee' proviso has also reportedly resulted in some schools not only deciding to expunge previously approved adjustments, but also refusing to implement *any* adjustments at all for 12½ years, for fear that they may not be ultimately approved by a government authority at the end of the 13th year for an exam which 'counts' for only a half or a quarter of the final-year grade.

Although the new Queensland disability adjustments policy has been in operation now for only a little over a year at the time of writing, and there have been no external Year 12 final exams held to date, some Queensland schools are reportedly already doing this, or threatening to do it. One teacher reportedly withdrew previously approved adjustments on the grounds that their provision to students with disability would make it more difficult for her to undertake the seemingly compulsory senior secondary 'compare and rank' exercise – ie, ranking the performance of a child with disability against that of their classmates (again, not a valid reason for withdrawing adjustments).

Other schools allege that of course they'd like to implement disability adjustments for schoolwork and for in-school tests but it would be 'unfair' to thereby raise the student's expectations and allow the student to come to rely on the adjustments – because then what will happen if the adjustments eventually turn out to be against the government authority's 'rules' and are thus not approved for the Year 12 final exams in several years' time at the end of the child's school career?

This response obviously ignores the importance of setting a longstanding precedent for disability adjustments, and overlooks the fact that individual schools have their own obligations to children with disability under the *Standards*, independently of government authorities.

For example in NSW, each school principal is the ultimate decision maker for in-class adjustments and for test adjustments for all non-State assessments up to and including the HSC trials exams. Disability adjustments will allow the child to proceed through school better able to show what they have learned and what they can do, and accordingly with a higher sense of academic self-concept and self-efficacy.

And in any event, even if adjustments are ultimately denied at first instance for the Year 12 final exams, experience shows that, with the appropriate evidence, they are usually forthcoming on appeal.

Withholding professionally recommended adjustments for 12½ whole years for fear that that they may not be granted at the end of the 13th year is clearly unjustifiable.

4.3 Lack of consistency amongst schools

One of parents' most frequent complaints in this context concerns the lack of uniformity or consistency in the way that the disability policies and initiatives of various education departments and government authorities are being implemented and obeyed.

Education department website documents and rhetoric often do not filter down to individual schools, such that the department's policies are being implemented in a haphazard, non-standardised and somewhat shambolic fashion, often seemingly capriciously and based on the personal beliefs, whims or cellophane prejudices of individual school personnel. Again, these sometimes vary even from classroom to classroom and from Year to Year.

Parents in GLD Australia report that they get wildly different responses when they ask exactly the same question of different schools. While one enterprising school will take the initiative and ring a parent to offer disability adjustments for NAPLAN on the grounds of impairments occasioned by ADHD, a parent at a neighbouring school will report that, when they applied for similar adjustments for NAPLAN for the very same disability, the answer was a categorical, "No we never give anything for ADHD."

One parent is told that speech pathologists know nothing, and it will be necessary to produce a report from a psychologist instead. Another parent in the same week is told that, in assessing language disorders, speech pathologists have more expertise than psychologists, and a speech pathology report will provide more persuasive evidence. And a few days later, another parent is told that neurologists know nothing, and it would be better to get a report from a GP instead. And so it goes on.

Similarly, in the context of the Year 12 final exams, there is enormous variance in individual high schools' (in all three sectors) in-house policies and procedures regarding decisions on whether to assist a student to apply to a government authority for disability adjustments.

While government websites clearly explain to schools how to apply, it is up to each individual high school to decide if they can be bothered reading it, let alone actually doing it.

Some supportive schools (especially independent schools) and teachers become skilled at understanding the government authority's criteria and procedures. These schools allot adequate time to staff to become proficient at drafting and submitting cogent applications and meeting strict deadlines. Some rich private schools and some Catholic schools will employ someone specifically to mastermind Year 12 disability adjustments applications, and will provide such people with sufficient paid time to undertake all the mandated, detailed extra paperwork and constant monitoring and verification, including preparing appeals, and negotiating with statutory authorities administering the application programs.

Teachers (or sometimes administrators or even lawyers) who are hired by some schools to undertake this work gradually become quite skilled at understanding the government policies' seemingly capricious eligibility criteria, drafting and submitting cogent and persuasive applications, negotiating with government officials, and meeting strict deadlines. They quickly come to appreciate what is expected in an application, and soon they begin to enjoy a good success rate. In some schools, applying for disability adjustments gradually becomes and remains a top-drawer, whole-school priority, especially those private schools which use their ATARs for marketing and publicity purposes.

State schools and poorer, lower-fee private schools, on the other hand, will understandably not have the resources or inclination to undertake and fund all that non-teaching work, and will accordingly discourage parents from asking that applications for disability adjustments be made to government authorities in the first place.

Some schools refuse to submit applications at all, or do so reluctantly on the grounds that it will be too much work which teachers will have to do at home on weekends, or that in their view adjustments constitute 'cheating' (as explained in **Part 4.2.3** above).

Some schools must be dragged kicking and screaming into the process. They protest to parents that the online procedure is just too complex and frustrating and 'not worth my time'. Even some of those who have been employed by private schools to do little else admit to parents that the procedure is tedious and complicated – they express disbelief that a busy classroom Physics teacher in a State high school could ever be expected to do the vast amounts of work involved on an occasional lunch hour.

Other schools notionally acquiesce and go through the motions of jumping through the government authority's hoops. Teachers claim that they are making attempts to engage with the government authority and submit cogent applications , when in reality they are just half-hearting it in a quite perfunctory way. Having failed to properly consult parents, they do an utterly appalling job of preparing and submitting the initial application.

Some schools mysteriously manage to repeatedly 'miss' deadlines (eg, deadlines to order Year 12 exams to be printed on coloured paper, deadlines to lodge appeals, etc.) – a practice which can only be described as negligent at best, and duplicitously intentional at worst.

A surprising number of schools 'forget' or neglect to keep a copy of the initial application which they submitted to the government authority – or later at appeal time, claim that they seem to have no copy of the original application, cannot access one online, and cannot recall what exactly was in it, or that the person who masterminded the initial application is now on 'stress leave' and cannot be contacted.

Other schools expressly admit that they are tired of applying for Year 12 disability adjustments because over many years they have been able to discern no pattern as to whose applications are approved and whose are not (as discussed in **Part 4.4** below).

Nevertheless, parents' appeals to a government authority are not usually entertained on the grounds that a disorganised and incompetent school has:

- 'forgotten' to submit an application on time, or
- failed to put enough (or any…) effort into compiling the application documents in a coherent manner in the first place, or
- 'lost' supporting documents, or
- 'forgotten' to consult parents, or
- wasted time by communicating with parents only via post instead of by email,

or on the grounds that the school's staff member who has been nominated to be the person responsible for disability adjustments applications this year is perpetually 'away today' or 'too busy' or 'on break now and can't take this call'.

Admittedly, introducing adjustments at school can prove time-consuming and cumbersome, especially at first. One mother was actually told by her child's school, "Yes, we've known for years that he has dyslexia, but we held off telling you because then you might ask for remedial intervention and disability adjustments. and that would make a lot of work for us, especially for State tests. Filling in all those application forms is time-consuming, and we just don't have the staff for that. But now that you've figured it out by yourself, and gone and obtained a report from a private psychologist attesting to the dyslexia, we're going to have to do all that extra work. We just want you to know in advance how much trouble it will be for us."

4.4 Lack of transparency

Sometimes parents complain about a lack of transparency noted when they apply to schools for their children with disability to have professionally recommended disability adjustments in the classroom for schoolwork and tests.

Applications are refused seemingly for no reason, and some parents have been told by educators simply, "It's my decision and I say NO! That's all you need to know, and don't ask again."

Appendix A is replete with examples of situations where parents have been left wondering why – according to what or whose criteria – their requests are being summarily refused or ignored.

For example, a parent may have a professional's recommendation that their child should be allowed to type on a keyboard in the classroom instead of being required to copy notes off the board in handwriting. The parent's request for that adjustment is summarily refused without reasons or discussion. If the parent then notices that another child in the same classroom is indeed allowed to regularly use a keyboard, the parent may wonder why that is. They may indeed ask the classroom teacher about the seeming discrepancy.

Experience shows that the response is invariably something about it being against a teacher's code of conduct to discuss one child's needs with the parent of another child – and of course that is correct. But the parent who has been refused is left wondering what tests or cut-off scores or other criteria were used to approve the eligibility of the other child but not their own.

What tests are being applied by whom to determine what is 'reasonable' in the circumstances, and why is the parent not allowed to express a view on that issue?

Where are the guidelines? And who has access to them?

Raising such questions at a school sometimes prompts parents to notice a novel outright hostility or simply a new chill in the air which wasn't there before.

When it comes to the Year 12 final exams, the situation becomes even more problematical.

Professionals report that their written evidence is routinely overruled or not understood. Government authorities' staff either summarily refuse to discuss the reports with parents and even with the authoring professionals, or begin to discuss the reports and immediately reveal that they have not the vaguest clue about the meaning of their contents.

Evidence is ignored in whole or in part, even when multiple kinds of professionals have made the same recommendations for disability adjustments, and government authorities' staff refuse to engage in discussions with respect to what evidence was and was not considered.

Written guidelines do in fact usually exist for the Year 12 final exams, but the guidelines are said to be 'secret' (see **Part 4.2.8** above).

As noted in **Part 4.3** above, high school teachers, who are not privy to the secret guidelines, can't fail to notice in the Year 12 context that sometimes they will submit to a government authority identical or almost identical applications for two students, and the first will be approved and the second not.

The rejection letter from the government authority to the unsuccessful student's school includes no reasons for the refusal, save for empty platitudes such as:

- The writing samples provided demonstrate that the student's ability is outside the guidelines for this adjustment, or
- The evidence provided does not demonstrate the need for this adjustment, or
- The evidence provided does not demonstrate that the impact of the student's disability in examinations is relieved by the use of this adjustment.

Parents and teachers are left wondering what exactly all that means. Clearly the evidence didn't meet the guidelines – but how? And by how much?

When teachers ring a government authority to ask for more ample reasons to justify the acceptance of one of their school's applications but not another almost identical one, they are again told simply that the second applicant 'did not qualify under the guidelines'.

Then, when teachers ask to view the so-called guidelines, they are told that the guidelines are 'secret' and must remain so on the grounds that, if schools and students had access to the guidelines and hence the threshold levels of impairment needed to qualify for adjustments under the authority's self-determined policy, then allegedly some duplicitous students would fraudulently and deliberately lower their performance to make sure that they would fall beneath the cut-off points set out in the guidelines…in other words, to make sure that they could 'cheat'.

When parents ring a government authority to inquire as to how and why their child did not meet the guidelines, and what the child would have to show in order to succeed in meeting them, parents are told a version of the same story: “If we were to tell parents what evidence we DO need to meet the guidelines, we’re afraid that parents just might go out and get it” (and compare in this connection comments about ‘cheating’ in **Part 4.2.3** above).

If an enterprising parent makes application under freedom of information legislation to view the ‘secret’ guidelines, what is produced is so heavily redacted as to be virtually meaningless, and includes no more information than is already freely available on the government authority’s website.

Parents report that information is also very hard to come by with respect to:

- how the government authority’s assessment process works,
- who the evaluators are (by qualification, not name),
- how many people review each application,
- who decides precisely how the guidelines are to be applied in individual cases, and
- how can a parent ever know for sure that their recommending professionals’ reports have even been read, let alone thoughtfully considered.

Parents and teachers can thus be forgiven, in the face of such secrecy, for arriving at their own conclusions as follows: the procedure must be that virtually everyone is refused on the first application, and the only people who ever succeed are those who appeal (and appeal and appeal...) and who make a nuisance of themselves, such that it finally becomes just easier to grant the requested adjustments than to continue to deal with the tenacious parent who is constantly submitting the annoying appeals.

4.5 Lack of consultation with parents and children

As noted above, too many education providers neglect to inform parents of their children’s rights with respect to disability adjustments for classroom activities and for State tests and exams, and accordingly leave it to parents, both to instigate applications and then, if successful, to ensure that approved adjustments are being properly implemented - **despite the fact that clearly not all parents are in a position to do this, or even in a position to know that they need to do it.**

Parents who seek to gather information from a school, to obtain support for their child at school, and to ‘enforce’ their child’s rights under the *Standards* are often made to feel as if they are nosy busybodies and serial nuisances.

In some schools the legislative duty to ‘consult’ with parents is virtually completely ignored.

Calls are not returned, emails go unanswered and school communications begin to be sent by post rather than by email. Sometimes the latter practice results in a situation where the event or exam which has been the subject of the communication has already taken place by the time the school’s paper epistolary message finds its way into the parent’s driveway post box. It’s too late to implement disability adjustments for an exam which was held last Tuesday.

Parents arrive at school meetings expecting to have an informal chat with a teacher and perhaps one other, only to find seven school representatives sitting on the other side of a long board table – all ostensibly there for the purpose of ‘helping’, but in reality attending the meeting to endorse whatever is being said by the principal. Some parents describe meetings where some of the participating school representatives are never even introduced, or end up talking amongst themselves while the parent sits silently, usually not comprehending all the jargon and acronyms.

Sometimes no minutes of meetings are taken. Other times, minutes are taken but then are never forwarded to parents for information or approval. Disability adjustments which are agreed on during a meeting are recorded on a paper but then, when the adjustments are never implemented, no one can ever account for what has ultimately happened to that paper. When minutes are indeed forwarded to parents, the meeting record sometimes bears little resemblance to the parent’s recollection of what actually took place on the day. Requests for corrections to the minutes are not even acknowledged, let alone acted upon.

School meetings are regularly and quickly brought to a close by a teacher or school official being interrupted by a secretary or clerk bursting in and frantically announcing that the teacher or official must immediately leave the meeting to attend to an ‘emergency’. This invariably arises in a manner which suggests a pre-arranged in-house agreement to the effect that at pre-determined time the meeting is to be terminated - and of course this ploy is the easiest way to achieve that goal and the simplest way to make sure that the parent immediately leaves the building to avoid becoming affected by the ‘emergency’.

Further, any parent who for whatever reason has a history of not getting along with someone at a school (the ‘troublesome customer’, as such parents are euphemistically called) has very little chance of being consulted about anything - even if the longstanding dispute has been with simply a clerk in the school’s office rather than with a school official, and even if the dispute relates to something other than disability.

Despite a school’s:

- legislative duty to 'consult' with parents with respect to disability adjustments (*Standards*, ss. 3.5 and 6.2 (2)(a)); and

- departmental duty to consult with parents in the planning and implementation of disability adjustments (see for example in NSW: https://schoolsequella.det.nsw.edu.au/file/d98404c4-4d09-49d1-bd87-ffea7e3fd1d8/1/ESES%20-%20Learning%20%26%20Support.pdf page 8, and https://education.nsw.gov.au/content/dam/main-education/student-wellbeing/whole-school-approach/Wellbeing_Framework_for_Schools.pdf page 8); and

- general duty to "engage parents/carers in the educative process", as set out in Standard 3.7 of the *AITSL Professional Standards for Teachers*: http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list , prescribed by the Australian Institute for Teaching and School Leadership ('***AITSL***'),

in practice, in my experience, parents generally have very little input into the adjustments to be introduced in the classroom, and no input whatsoever into applications for the Year 12 final exams - until after the initial application has been refused and in the context of a later appeal process – a complex procedure which depends on the production of 'new' evidence not previously submitted.

In particular, parents express disgust at the deeply shallow responses they regularly receive from their schools whenever the topic of adjustments for the Year 12 final exams is broached. Further, any direct approaches made by parents to government authorities by phone, email or paper letter are met with a terse reply to the effect of, "We won't talk to parents. Ask your school, not us."

One government authority sent an email to a parent saying that the authority's decision letter had been sent to the school, and the parent should contact the school to obtain it. Upon doing that, however, the parent was told that no one at the school could find it, and everyone that day was too busy to look for it. This was particularly concerning as the appeal period of 14 days in that jurisdiction starts to run when the notification is sent to the school, not when a school gets round to locating and forwarding it.

Applications to government authorities can generally now be made not by parents but rather only by schools on downloadable forms available only to schools from a government website. Schools must apply on behalf of their students using a site which requires a login and password so that parents are excluded from the process. Students, not parents, sign the application form, and rarely is that form taken home first for a parent to consider before their (presumably minor..) child agrees to sign it. How many minor children will refuse to sign whatever paper is placed in front of them by a school official, especially if the paper is presented as 'helping you to get adjustments for your exams'?

Further, children report being told to sign blank and undated Student Declaration forms, without any idea of what or why they are signing – they do it simply because an adult at school tells them to. Sometimes a student is told that they must sign such a form which has been completed by someone else, but they are not afforded sufficient time to read what has been drafted on their behalf in the boxes entitled *"I am assisted by this provision in the following ways:"*

Some students with disability go for years without ever being consulted individually about what kinds of disability adjustments might assist them in the classroom and during exams. Even worse, when some form of consultation is attempted, questions about adjustments are often directed at the child in an impatient tone within the hearing of other students.

Many schools neglect, or expressly refuse, to show parents or students a copy of what they propose to send to a government authority on behalf of the student. When a parent later discovers the contents of what was submitted, they are often aghast at the poor quality of the application, the school representatives' numerous mistakes in spelling and grammar, and the incomplete, unsatisfactory and totally unconvincing way in which the evidence has been compiled and presented.

Similarly, medical and allied health professionals report that, once the parent finally does succeed in obtaining a copy of 'what finally went', the professional is astounded to note that the school has selectively tweezered out a few passages from the professional's report and has included only those few passages, with the result that:

- the overall impression left is far different from that intended by the authoring professional, and
- the disability adjustments which end up being applied for are quite different from what the professional had expressly recommended.

In recent years, as the application procedures in some jurisdictions have become more and more complex, and the 'rules' more and more numerous and indecipherable, private professionals report an ever-increasing number of applications which in their judgement have been completely 'botched' by schools or by government authorities or by both.

They note also with disdain the fact that the vast majority of parents are completely unaware of this and are all too ready to simply accept the first "NO!" and not proceed to appeal.

At least back in the days when PARENTS masterminded the applications to government authorities, the students who unfairly lost out were those with ineffective parents, rather than those with incompetent schools.

4.6 Lack of privacy

Some members of GLD Australia report that, once their child’s disability adjustments have been approved, the child brings home an exam schedule with the names and surnames of **every** child in the Year or in the school who will be using adjustments, with directions on who is to report to which room and when.

If parents suggest to the school that this is a breach of privacy, the school usually agrees and undertakes to not do that again – and then, come the following exam period, the school sends home exactly the same sheet with the same details and the same names.

Not all children with disability have disclosed to their peers the fact or nature of their disabilities, and such notices merely serve to prompt some students to then enquire, “So what’s the matter with you that you get to sit in a separate room?”

On the other hand and laudably, other parents report that their schools go to great lengths to ensure that teachers do not draw attention to a child’s disability adjustments or discuss with others the reasons why the child is entitled to them. When challenged by other students as to why a child was, for example, going to be allowed to type answers on a keyboard, one kind teacher replied simply, “Because I say so – that’s why!”

4.7 Lack of equity amongst families

Some parents are determined to persist in the face of rejections when they request disability adjustments for their children.

Such parents tend to be feisty, well-educated, well-informed, well-connected, articulate, thick-skinned and thoroughly skilled at making a nuisance of themselves until the professionally recommended disability adjustments are finally granted. They are not setting out to rort the system, but they do have enough information and confidence to understand that their child is legislatively entitled to support, and they resolve to obtain it.

On the other hand, not all parents take such action.

Most parents simply don’t know what to do.

Not all belong to support groups such as GLD Australia. Some simply do not have time, or are for whatever other reason not inclined, to undertake any kind of sustained and stress-producing action.

Accordingly, in the face of initial school rejections and teachers’ expressions of reluctance to introduce disability adjustments or to apply to government authorities, these parents elect to do nothing.

Their children with disability then receive exactly that – nothing.

There seems to be no mechanism to ensure that such inequities do not occur. The squeakiest and most annoying wheels tend to succeed at obtaining the required disability adjustments for their children.

In my experience, inequities seem to be particularly pronounced in the case of parents whose first language is not English, who are low-SES or poorly educated, or who may have migrated to Australia from jurisdictions where it is considered generally unwise to ever question or appeal any kind of government decision or to otherwise draw attention to oneself.

Because joining GLD Australia is free, the parents for whom I advocate represent a very broad spectrum.

On the one hand, some are quite **wealthy** and can afford the very best barristers and the very best medical and other professionals. With seemingly unlimited money and unlimited time, they can and do consult multiple highly-credentialed specialists and collect numerous well-written and well-argued reports strongly recommending disability adjustments.

Such parents repeatedly prepare time-consuming, well-written and well-argued submissions. They are tenacious and they end every interaction with an education provider with a subtle reminder that, “If you say no this time, I will go higher and I will go elsewhere and this is not finished.” Some of these parents have children in private schools, but some also have children in State schools.

On the other hand are those parents who rely on **Centrelink** payments and who must queue for services from medical professionals who will agree to bulk bill, or from other allied health professionals who work in the public sector and charge little or nothing. These parents tend to have children in State schools.

I have noticed over the years that those in the former (wealthy) category seem to succeed faster and more easily when it comes to applying for disability adjustments, and especially when lodging appeals to a government authority in the face of rejections of initial applications.

This is so especially in the case of feisty parents with good written English and impressive job titles and letterheads (and names which tend to 'google well'). These parents usually succeed – or succeed faster and with fewer appeals – while parents with none of those attributes tend to rarely if ever succeed.

I have noticed also that the more professionals' reports a parent is able to accumulate, the better are the chances of success at first instance, especially when six or seven different kinds of professional are recommending the same or very similar adjustments.

Yet in my view it is not always the case that the children of the wealthy parents are more greatly impaired by their disabilities than the children of the Centrelink-dependent parents.

Private psychometric and disability assessments by skilled professionals can be very expensive. Some university psychology departments can administer less expensive ones, but these tend to be performed by undergraduate students or interns under supervision (with of course the consequent decreased probative value which their reports then carry). Most public child and adolescent health services cannot or do not offer them.

This patent inequity based on wealth is of great concern.

A way needs to be found so that all children with disability can have their degree of impairment independently assessed and measured by competent professionals on a wealth-blind and sector-blind basis.

It should not be a contest to see who can pay for, collect and thus submit the greatest number of costly professionals' reports.

Neither should the ultimate result depend on a school's or government authority's subjective judgement of the parents' ability to 'go the distance' and hire expert legal counsel who will be equipped to competently argue against the school's or authority's barristers if and when a case proceeds to conciliation at the AHRC – or perhaps finally on to a court hearing.

5. Parents' responses

Some parents accept the kinds of excuses outlined in **Part 4.2** above and listed in **Appendix A**. They crumble under the pressure of continuing to negotiate with their school or with a government authority - and they decide to do nothing. Undertaking such a Sisyphean task appears to be all just too hard.

Similarly, parents who have attempted to continue advocating in former years may decide to no longer pursue such avenues. They are shocked and outraged to discover that they and their child have experienced reprisals at the hands of teachers or school officials in the context of the frequently-reported ‘pay back’ for having dared to complain about anything at school.

For example, parents report that once they raise the disability adjustments issue, their child’s grades mysteriously begin to plummet, numbers of detentions and other punishments increase without explanation, and the child experiences growing instances of being ridiculed, belittled or humiliated in front of peers or even in school assembly. Awards or prizes distributed at school assembly inexplicably cease, and parents are surprised when a child is suddenly ‘dropped’ from a favourite sporting team. Such parents soon learn that, in the interests of their child’s future at a given school, the best solution is to simply stop all advocacy for disability adjustments.

Arguably such outcomes might constitute victimisation, within the meaning of s. 42 of the *DDA* and described in **Part 7.2** below.

Other parents, faced with a school’s unrelenting refusals to even discuss the possibility of disability adjustments, decide to look for solutions outside the formal education system.

Some parents enrol for private tutoring or coaching or remedial programs, regardless of whether they can truly afford such interventions, and regardless of whether the program chosen is evidence-based (See **Part 4.2.5** above).

Especially tragic in this context are the outcomes awaiting parents who are prompted to haemorrhage cash in the direction of all manner of expensive ‘neuro-babble’ programs or courses or remedies or ‘cures’ offered by ‘edu-businesses’ which are far more interested in a parent’s wallet than a child’s long-term improvement at school. It is amazing how many businesses seemingly make a living out of offering expensive but unproven therapies and out-of-school programs run by commercial ‘edu-entreprises’.

Disabilities associations such as AUSPELD, SPELD NSW, and Learning Difficulties Australia caution in particular against programs such as:

- Reading Recovery,
- Arrowsmith,
- Brain Gym,
- Cellfield,
- Cogmed,
- Fast ForWord,
- Davis Dyslexia,
- DORE/DDAT,
- Lumosity, and

- Tomatis.

Over the years, many parents of children with disability have devoted enormous amounts of money to programs and 'remedies' which turn out to be shams, scams and hoaxes. All the time and money spent on such programs could have been more usefully devoted to a non-commercial, evidence-based remedial program delivered by an experienced special education teacher or a qualified allied health professional.

Parents' extreme fragility and vulnerability understandably result in the often heard, "Well there may be no science behind this new program, but my hairdresser's nephew tried it and it 'worked' for him. We're desperate, and we won't rest until we have tried absolutely everything."

Families with seemingly unlimited funds try program after program and 'cure' after 'cure' and, when nothing actually 'works', they console themselves with the thought that at least they did indeed try absolutely everything.

Families with little money on the other hand are reduced to taking all the money saved for this year's summer holiday and donating it instead to some evidence-free scam.

In addition to all the wasted money, participation in such programs invariably means that, as well as coping all day at school, a tired and academically discouraged child is faced with the prospect of regular after-school attendance at an outside clinic or tuition centre, or evenings under parent supervision at home spent mindlessly performing repetitive computer exercises which are purportedly designed to 'rewire' the child's brain. Invariably when the interventions fail to live up to their business owner's hype, what the child internalises is that, "Yet again they have tried to fix me, and it didn't work. So how dumb must I be?"

On the other hand are the parents who judiciously decide not to 'look elsewhere' and who refuse to acquiesce in the face of the constant rejections which they receive from education providers.

These parents decide that in reality it is *not* just 'all too hard'. They resolve to take the risk that there may be vindictiveness and victimisation, and they decide to nevertheless pursue the matter at length with the school principal or with other senior educational administrators or with officials of a government authority. If still unsuccessful, some parents go on to lodge appeal after appeal or eventually, in extreme frustration, to file a complaint with the AHRC.

As mentioned in **Part 4.2.8** above, in virtually all the cases over the last few years in which I've helped parents in the context of appeals or complaints (in my capacity as support person, not lawyer), the school or government authority has almost always eventually reversed its initial decision as to whether a professionally recommended adjustment is 'reasonable' – either immediately after the parent appeals or lodges the complaint, and especially at, or just after, an AHRC conciliation conference.

Unjustifiable hardship is virtually never raised as a defence in the context of gifted children with disability, because what their professionals are recommending (eg, rest breaks, coloured paper, homework being written up on the board as well as being assigned orally, etc) is usually simple and costs little or nothing.

Even when a case is not resolved at an AHRC conciliation conference, negotiations between the parents and the school or government authority continue, and the latter almost invariably finally agrees to implement the previously denied disability adjustments.

So ultimately parents who appeal do indeed 'win' - but at what cost and stress for all parties?

Taxpayers would be astounded to learn that they are paying the salaries of multiple staff from government departments and authorities to sit for hours in AHRC conciliation conferences, contributing very little. In one five-hour conciliation conference in which I was involved, the government had even sent a representative from the government insurance office for the sole purpose of 'making sure that the solicitor representing the education department doesn't agree to pay anyone any money' (even though the parent was not seeking damages or any form of monetary compensation). How much would that morning meeting have cost? Could that not have been equally well accomplished by an email to said solicitor in advance?

Could all the taxpayers' money currently devoted to fighting with parents not be better spent training teachers to meet the needs of students with disability in their classrooms – or to reforming the tortuous and time-consuming government application procedures for the Year 12 final exams?

The schools or government authorities in cases where the child eventually 'wins' were not 'forced' by the AHRC to approve or implement the disability adjustments (as it is not the role of the AHRC to **tell** the parties what to do).

Rather, in each case it became increasingly obvious to all parties that what had been professionally recommended for the child:

- was actually eminently 'reasonable',
- would not constitute unjustifiable hardship for the school or for a government authority,
- would not advantage the applicant child,
- would not disadvantage anyone else,

- would not interfere with the integrity of the exam (*Standards* s 3.4 (3)) for which the adjustment had been recommended, and
- simply should have been approved in the first place with no arguing and no fuss.

In the vast majority of cases with which I am familiar, the disability adjustments being applied for were pathetically simple (something as time-consuming as enlarging a photocopy of an exam paper so that a child with a documented vision issue could actually *see* it), and in each case the school or government authority ended up looking a tad foolish for initially having said "No". Not a question of installing expensive wheelchair ramps or lifts or extra anything, just simply enlarging a photocopy….

Although the AHRC complaints avenue usually leads to success for that applicant, *quaere* how many other children with disability can benefit from a positive AHRC conciliation outcome, because after a conciliation conference, the parent is almost always, as far as I know, required to enter into a confidentiality agreement, and from that moment on, is precluded from telling anyone, including me, the details of the resolution and the contents of the ensuing written agreement. I eventually learn the results simply because the parent tells me, "I'm happy."

Along similar lines, it is interesting to speculate on why so many Year 12 exam disability discrimination complaints are resolved just before, during, or just after an AHRC conciliation hearing. Once a statutory authority has formed the view that the complainant parents really are determined enough (and perhaps rich enough) to 'go the distance', decisions which have been made and repeatedly affirmed on appeal in the past are suddenly overturned.

For example, I was due to support a family by participating in an online AHRC conciliation hearing next week in the context of a non-gifted child with professionally documented *physical* disability whose longstanding adjustments were being withdrawn for the Year 12 final exams. The statutory authority responsible for administering the relevant disability adjustments program did engage with the AHRC (sometimes they don't bother…) and agreed to attend the conciliation hearing, but a few days before the scheduled date, contacted the AHRC to say that the child could have their longstanding and accustomed adjustments after all, because the authority had 'reviewed the file' and had changed its decision.

This is inexplicable. There was not a speck of evidence in that file which had not been there since the initial application and had not been repeated in every subsequent appeal. All along, the authority's answer had been "No!" on the grounds that the child did not meet the criteria in the authority's secret guidelines. Once the date for conciliation had been set though, the authority found time to 'review the file' and located or re-considered the strong substantiating evidence that had been sitting there all along.

Of course a welcome result for this child, but how many other Year 12 students with disability in that jurisdiction with possibly equal or greater levels of impairment have been summarily refused exam adjustments by that authority? How many Year 12 children have had parents or schools who have acquiesced in the face of the first negative response and not appealed. Why should this one child, with feisty and well-informed parents, succeed when others haven't?

It is interesting to speculate also on why more AHRC complaints which fail to resolve at conciliation do not proceed to a court hearing, even when parents have expressed a resolve to hire counsel to take that step. One could be forgiven for concluding that the respondent education provider has received legal advice that, because the prospects of 'winning' are not great, it would be better, in the interest of not having a public precedent set, to simply grant the child the extra time or use of a computer or whatever else is being applied for.

Observers have remarked that in the majority of cases which DO proceed to a hearing, the applicant child 'loses'. Could that be because those are the only cases which the education provider's legal advisers have allowed to continue, since the child's case is weak and the prospects of success are good? Given that, as noted above, AHRC complaints which are resolved before a court hearing are usually the subject of a confidentiality agreement, we will never know how many are summarily and quietly settled at the last minute to avoid publicity and to preclude the establishment of an unfavourable precedent against an education provider – exactly as happened in the case of the parents I was due to support next week.

6. When disability adjustments are notionally granted

Sometimes, after a parent has appealed a negative decision or has made it clear that they are aware of their child's entitlements under the Legislation, after a few days the requested disability adjustment seemingly miraculously appears on the child's desk or is otherwise furnished by a school without comment.

However, even when disability adjustments are notionally granted, **often the adjustment is short-lived**, and it is eventually forgotten or quietly withdrawn after a brief time, usually without consultation with the parents (see **Part 4.5** above). Parents are disappointed and angry when they discover that, despite all their stressful advocacy, the approved disability adjustments are not being implemented in any sustained or continuing fashion.

In some cases, the adjustments are implemented properly for one year, but then the parent finds that every January they must begin the whole tedious and stressful process all over again with new teachers.

If the previous year's teacher has left the school, parents are sometimes told, "Oh no, Mrs XYZ would have never allowed him to use a keyboard or have extra time – that would never happen here - you must be mistaken!"

Sometimes when the requested disability adjustments are notionally approved, a formal ILP/IEP/ISP/PLP/ICP (however called) is drafted and negotiated and signed off on.

However parents often report that, after a short time, the official 'plan' is put into a drawer, never implemented in any meaningful way and ultimately forgotten. The disability adjustments listed in the plan are not sustained. When teachers are asked about this, they invariably say that they were finding the plan 'too complicated and too hard to implement'. Rarely is the ILP, etc passed from Year to Year and from teacher to teacher as the child progresses through school.

Still in other cases, the disability adjustments are initially granted without argument, but then their implementation is made conditional upon the child improving their 'behaviour' before being entitled to use them. This reflects an incorrect view that disability adjustments constitute some kind of reward or favour or privilege, when in fact it may well be the case that the child's challenging 'behaviour' is being caused in the first place by the disability, and may disappear or markedly improve once the disability is being properly addressed and supported.

Appendix B lists some of the excuses given by schools as to why previously approved disability adjustments are no longer being implemented.

7. Lived experiences

This **Part** is devoted to examples of children's and parents' experiences in applying for and using disability adjustments in mixed-ability settings, in select-entry school settings and in Year 12 final exams.

Examples of the issues described in the following **Parts 7.1 to 7.5** are set out in **Appendices C to F**, but it is worth noting that these constitute just a sprinkling of such instances – the root problems are being perpetuated and the instances are being repeated year after year with very little or no improvement being noticed by those of us working or volunteering in the field.

7.1 Lived experiences – children in mixed-ability settings

I am regularly contacted by parents who claim that their children with disability have experienced one or more of the events described in **Appendix C.**

Daily interactions such as these suggest that serious attention needs to be paid to the possible cause of the allegedly rising statistics with respect to mental health needs in schools.

Psychologists regularly point to the particularly poor outcomes which may be expected for gifted children with disability who are forced to cope for years with the fact that neither their gifted needs nor their disability needs are being addressed in the mixed-ability classroom.

7.2 Lived experiences – parents of children in mixed-ability settings

I am regularly contacted by parents who claim that they have experienced one or more of the events listed in **Appendix D.**

It is arguable, I submit, that at least some of the examples in **Appendix D** constitute victimisation, contrary to s. 42 of the *DDA* and s. 8.3 of the *Standards*.

Yet such interactions between school officials and parents tend to be generally oral rather than written, and hence create evidentiary barriers for parents wishing to rely on the legislative victimisation provisions.

One parent drew a school’s attention to the relevant victimisation provisions and was told simply, “So try proving that I ever really said it.”

Section 8.3 of the *Standards* imposes onerous obligations on education providers with respect to victimisation of parents who suggest or hint that they are thinking of taking action under the *Standards* for the purpose of obtaining disability adjustments for their children with disability.

This highlights the urgent need for training of all teachers and other school officials who are called on to meet with advocating parents.

In these days of unobtrusively recording oral interactions on mobile phones, I foresee that the day will soon come when a parent WILL indeed be able to ‘prove that it was really said’.

7.3 Lived experiences – applicants for select-entry schools, programs or classes

Appendix E lists some of the excuses proffered by school officials and education departments to justify a refusal to implement professionally recommended disability adjustments for entrance tests for select-entry schools, programs or classes.

Some education departments' websites concerning such entrance tests sometimes purport to impose a blanket prohibition on the possibility of certain kinds of disability adjustments for all applicants (see **Part 4.2.8** above) with respect to the possibility that this practice arguably runs contrary to s. 44 of the *DDA*), regardless of the severity of disability or level of impairment, and in seeming breach of the parent consultation requirements in the *Standards* (see **Part 4.5** above).

Failure to grant disability adjustments to intellectually gifted children in this context arguably results in the exclusion of many gifted children with disability from select-entry schools, programs and classes, even though the research literature overwhelmingly notes the need for such children to be treated as 'gifted first', to be kept in a large cluster of their IQ peers, and to be provided with appropriately challenging academic work, despite not yet achieving good grades.

In some cases, the emotional damage resulting from such refusals can be immeasurable. The gifted child with disability is forced to witness the acceptance of less able classmates who have regularly scored lower on in-class assessments or who have invariably taken longer to understand new class work.

This experience can be soul-destroying. The gifted child is humiliated when constantly asked by classmates why they are not going into the select-entry class or why they are not proceeding on to the select-entry high school, and when having to admit over and over that, despite their heretofore high grades on untimed assessments, they 'failed' the strictly limited-time entrance test because they just couldn't finish it.

7.4 Lived experiences – children already enrolled in select-entry schools, programs or classes

Appendix F lists excuses proffered by teachers and school officials to parents of gifted children with disability who are already enrolled in select-entry schools, programs or classes to justify a refusal to implement previously approved disability adjustments.

Again, these excuses reveal a very limited understanding of disability and of educator providers' obligations under the *Standards.*

7.5 Lived experiences – students sitting Year 12 final exams

As noted numerous times above in the context of Year 12 finals exams, most disability adjustments for such exams may not be granted solely by a child's school, but instead require a formal online application to a government authority for approval under a procedure described on the authority's website.

In NSW for example the procedure is here http://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions and https://ace.nesa.nsw.edu.au/disability-provisions, and in Queensland here: https://www.qcaa.qld.edu.au/senior/assessment/aara

This **Part 7.5** deals with some aspects of that application process which have not been canvassed elsewhere in this submission, and which have proved difficult for **all** Year 12 students with disability, but in some cases especially arduous for **gifted** Year 12 students with disability.

Attention is focused on parents' experiences with respect to the capricious, draconian, inconsistent and shambolic way in which disability adjustments policies are currently being implemented.

The links above attest to the way in which the Year 12 disability adjustments programs are **supposed** to operate. The websites leave the impression that the program is being implemented in an equitable and considered manner.

Experience belies this impression, and tells a different tale, as explained in this Part and elsewhere in this submission.

The reality is that for some students with disability, adequate disability adjustments for the Year 12 exams are notoriously difficult to come by.

I have advised a variety of parents who have furnished a file containing professionals' reports on a Year 12 child's disabilities dating back to age 6 or 7, and still the child's initial application for Year 12 disability adjustments for exams has been refused.

7.5.1 “Forget all the equity stuff – *these* exams are serious”

As noted in **Part 4.2.8** above, numerous documents on government websites contain all manner of aspirational statements about the importance of providing adjustments to students with disability, together with a collection of hollow undertakings with respect to how students are to be fairly assessed.

See for example in NSW: https://syllabus.nesa.nsw.edu.au/support-materials/adjustments-for-students-with-special-education-needs/, and in Queensland https://education.qld.gov.au/students/students-with-disability .

Queensland’s websites seem to be especially replete with lofty pronouncements and aspirational claims about so-called ‘equity’, ‘differentiation’, ‘inclusion’ and the like.

Here are some from the **QCAA** website:

“QCAA is committed to Queensland students accessing a fair and just, inclusive education which provides… access and participation for all students, on the same basis as their peers [and] adjustments, where required, to enhance engagement and equitable outcomes for all students.” and *“These equity principles underpin all functions of the QCAA.”* **‘Equity statement’** (2020): https://www.qcaa.qld.edu.au/about/k-12-policies/equity-in-education/equity-statement

“Schools provide opportunities for all students to demonstrate what they know and what they can do.” **‘Equity in education’** (2019): https://www.qcaa.qld.edu.au/senior/certificates-and-qualifications/qce-qcia-handbook-2019/1-senior-schooling-qld/1.4-equity-education

“Teachers can support students to access a socially just education by:

- *designing … assessment activities that are … inclusive*
- *ensuring access and participation for all learners, on the same basis as their peers*
- *making adjustments, where required, to enhance engagement and equitable outcomes for all students*

Assessment is equitable if it provides opportunities for every student to demonstrate what they know and can do. Individual learners’ needs must be considered and, if required, adjustments made to the ….. mode of assessment…” **‘Principles of quality assessment’** (2018): https://www.qcaa.qld.edu.au/about/k-12-policies/student-assessment/understanding-assessment/principles-quality-assessment

"Any inclusive strategy must be selected on the basis of the individual student's needs and used consistently throughout teaching and learning experiences as well as assessment. Evaluating the use and effectiveness of any adjustment is necessary to ensure meaningful student participation and achievement." '**Reviewing the inclusive strategies - Effectiveness of adjustments'** (2014): https://www.qcaa.qld.edu.au/downloads/aust_curric/ac_diversity_reviewing.pdf

"Expect all students to be able to demonstrate what they know and can do. Provide multiple opportunities for students to demonstrate what they know and can do. Plan early for any adjustments. Select adjustments that are appropriate for the individual student. Involve the student in the choice of the strategy." '**Inclusive strategy: Response**' (2014): https://www.qcaa.qld.edu.au/downloads/aust_curric/ac_diversity_inclusive_strategies.pdf

"Adjustments to assessment practices, processes and tasks for students with disability and diverse learning needs should be planned and made available. It is critical that consultation happens at the beginning of the curriculum planning process so that adjustments are incorporated into the entire teaching, learning and assessment cycle." **'Special educational needs'** (2014): https://www.qcaa.qld.edu.au/downloads/p_10/kla_using_framework.pdf

"The following are strategies for applying the Queensland School Curriculum Council's equity principles in the development of curriculum and test materials: …

- *Design and provide a variety of assessment tasks and processes to enable students with disabilities … to demonstrate what they know and can do with what they know.*
- *Suggest the use of adaptive technologies (e.g. communication boards, keyboard pointers) for some students with disabilities*

'Equity Considerations for the development of curriculum and test materials' (2001) page 14: https://www.qcaa.qld.edu.au/downloads/publications/research_qscc_357other_01.pdf

And here are some examples from the **Education Queensland** website:

"Our commitment means that children and young people across Queensland … of all …abilities are able to… achieve academically … with reasonable adjustments and supports tailored to meet their learning needs." '**Inclusive education'** (2020): https://education.qld.gov.au/students/inclusive-education and

http://ppr.det.qld.gov.au/pif/policies/Documents/Inclusive-education-policy.pdf

"Differentiated and explicit teaching and learning for all students provides adjustments that will … include … conditions of the summative assessment task including any adjustments for individual students." **'Whole school approach to differentiated teaching and learning'** (2020) page 2: https://education.qld.gov.au/curriculums/Documents/school-approach-to-differentiated-teach-and-learn.pdf

"All students are entitled to demonstrate their knowledge, understanding and skills in response to assessments. Schools and teachers support all students to participate in assessment and demonstrate the full extent and depth of their learning. … Special provisions in the conditions of assessment may include … allowing students to complete assessments in different ways such as using computer software or an assistive device … [and] … allowing the student a longer time to complete the assessment, or change the way the time is organised or when the assessment is scheduled." **'Assessment and moderation in Prep to Year 10'** (2020) page 3: https://education.qld.gov.au/curriculums/Documents/assessment-moderation.pdf

"… students with disability are entitled to reasonable adjustments to enable them to participate in education on the same basis as other students. Education providers must consult with the student (if possible) and parents before making a reasonable adjustment." **'Students with disability'** (2020): https://education.qld.gov.au/curriculums/Documents/students-with-disability.pdf

"We will measure our success by increasing the proportion of students with disability receiving a Queensland Certificate of Education." **'Every Student with Disability Succeeding'** (2017) page 2: https://education.qld.gov.au/student/Documents/disability-review-response-plan-1.pdf

"Keep in mind multiple accommodations may be necessary to meet a single learner's needs. … Identify if any other adjustments would be 'less disruptive and intrusive and no less beneficial' for the learner. …Monitor, in collaboration with the learner and others where applicable, the continuing relevance of adjustments to meet changing learner needs." **'Reasonable adjustment in teaching, learning and assessment for learners with disability**' (2018): https://desbt.qld.gov.au/__data/assets/pdf_file/0028/8299/reasonable-adjustment-for-web.pdf

The website objectives listed above all sound wonderful.

Readers could be forgiven for believing that the education (including assessment) of students with disability is to be guided by the likes of all the laudable and aspirational proclamations appearing in the posted documents listed above.

But if students with disability are supposed to be protected by all those worthy decrees for the first 12½ years of their school career, why is it that half way through the 13th year, so many disability adjustments policies appear to be based on the following unspoken principle:

> *Year 12 final exams are serious! Everyone must write them under the exact same conditions. To do otherwise would call into question the validity and reputation of our whole Year 12 accreditation.*
>
> *So, it's time now to forget all that fluffy equity and differentiation and inclusion stuff that we've been carrying on about over the years. Time now to stop worrying about every student's individual needs. Time now to start treating absolutely every student exactly the same – except for those few students with disability who can manage to fit themselves within our harsh and inflexible rules for the approval of adjustments.*

Sadly, the tone of so many disability adjustments policies suggests that they are based on the premise that: "Let's start with the assumption that all applicants are just dodgy cheats with overly ambitious parents who are trying to obtain some kind of 'advantage', and who are out to rort the system, and then let's see how well you can jump through all our hoops to prove that you're really NOT!"

7.5.2 "Show us how you can fail first"

In some jurisdictions, as part of the application process, schools must carry out their own testing of the student's performance on in-school assessments.

In NSW for example, two essays must be written without disability adjustments (eg, no extra time and in handwriting, no matter what level of impairment has been documented in the child's professionals' reports, and no matter what disability adjustments the child is accustomed to using in the classroom and for in-school exams).

At least one such essay must be something which 'counts' towards the student's final Year 12 grade (and hence ATAR) - presumably to control for the possibility that some students would duplicitously write very little or purposely put in a substandard effort in the hopes of obtaining an 'advantage' in the form of an adjustment to which they were not entitled.

The essays are used to decide if a child's performance is sufficiently substandard according to unspecified benchmarks written in secret guidelines (see **Part 4.2.8** above). If the essays are not deemed 'bad enough', the adjustments are refused, but as noted above, the child is told something vapid and nebulous such as, "The written samples submitted do not demonstrate the need for this adjustment." The rejection letters allege in essence that the professionally recommended adjustment is not 'reasonable', but fail to provide cogent reasons or justifications for arriving at that conclusion. No explanation and case closed.

The 'fail with one adjustment before you'll get a different one' rule arises most often in the context of a child being able to prove that they will fail in dictating to a scribe before being allowed to type on a keyboard. In NSW for example, see https://educationstandards.nsw.edu.au/wps/wcm/connect/87c42de7-1d3f-4af4-8757-abda3a8e7142/HSC+disability+provisions+guide+for+teachers+and+parents.pdf?MOD=AJPERES&CVID= page 7, para 8 and page 18. To qualify for a keyboard, the child must show that "*there is strong medical evidence that the student's writing difficulty cannot be addressed with any alternative provision, such as a writer or rest breaks.*" https://educationstandards.nsw.edu.au/wps/portal/nesa/11-12/hsc/disability-provisions/provisions/computers-laptops

This process is tantamount to testing a child with low vision without their glasses, and then if they fail the test, giving the glasses back to the child – but still 'counting' the first attempt and its resulting poor mark towards the child's final grade.

By failing on the in-school assessments, the child is seen as 'proving' that they do indeed have a disability, and are in need of their professionally recommended disability adjustments.

However, the effect on the academic self-concept and self-esteem of a very clever and usually high-achieving child does not figure in the thinking behind this cruel 'show us how you can fail first' process.

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf which are made in the context of disability discrimination legislation similar to Australia's) provide expressly that a candidate need not be failing before they can qualify for adjustments, and indeed that a 'person with a history of academic success may still be a person with a disability who is entitled to' disability adjustments (page 3).

In the United Sates a child with disability need not "show us how you can fail first".

A slightly more technical/legalistic argument regarding the 'fail first' requirement is the following.

Since one of the 'prove you will fail' in-school assessments must 'count' towards the child's final grade, presumably that assessment constitutes part of the child's 'education' for purposes of ss. 3.3 (a) and 6.2 (1) of the *Standards* (ie, it is not a separate free-standing assessment administered solely for diagnostic purposes).

Consequently, how can a government authority justify imposing a blanket prohibition on all disability adjustments for **that** 'show us how you can fail' assessment without considering the 'reasonableness' of the child's recommended adjustments and without meeting the authority's other obligations under the *Standards* to allow a child with disability to 'participate' in their 'education' **on the same basis** as a child without disability?

Clearly if the resulting grade 'counts', then presumably that assessment constitutes part of the child's participation in their 'course or program' (*Standards* s. 6.2 (1)), and accordingly denying disability adjustments for that task could arguably be considered unlawful.

7.5.3 Schools' dissatisfaction with the current system

Even school leaders and teachers regularly and publicly express exasperation and dissatisfaction with what they regard as the inequitable way in which government authorities are implementing their programs for disability adjustments for Year 12 final exams.

Teachers and school counsellors allege publicly that they are expected to gather the necessary evidence and submit cogent applications:

- without having ever been trained in how to do that, and
- without being released from face-to-face teaching responsibilities to allow for enough time to direct their attention to learning how to complete and submit applications properly.

Some report that they are reduced to undertaking it at home on weekends and after a few years they grow tired of doing that.

As noted in **Part 4.2.4** above, school personnel marvel at what they view as inexplicable discrepancies between the ways in which very similar students at the same school are treated.

One teacher who attended a NSW public learning disabilities association seminar on how to interpret IQ tests announced to the audience that she had enrolled in the seminar chiefly in order to learn 'how to better fight with BOSTES [now the NSW Education Standards Authority ('***NESA***')]'.

Another teacher in a public forum complained that every time she rang the relevant government authority for advice with respect to Year 12 disability adjustments, she received a different answer.

Other teachers have asserted publicly that they can ring a government authority three days in a row and speak to three different people and get three different answers to the same question. Said one in front of a public audience, "It seems to me as if the policy is independently determined by whoever happens to be walking past when a phone rings."

This is clearly beyond ridiculous.

Such seeming inconsistencies between what an authority **says** (see **Part 7.5.1** above) and what it **does** have served to damage the reputation of government authorities and do not go unnoticed by teachers or parents.

In my view, they contribute to the repeated belittling and ridiculing of such authorities in public forums (eg, public meetings and conferences of teachers and/or parents). In my experience, the more that teachers or parents compare experiences in public meetings and find that everyone has been told something quite different, the more laughter erupts in the audience, and the more disrespect is directed at the seemingly ramshackle programs for disability adjustments for Year 12 final exams.

7.5.4 Lack of consistency amongst jurisdictions

Parents across Australia report that there is little consistency among the various State government authorities with respect to their policies on disability adjustments for Year 12 final exams.

Some States have offered very generous adjustments for Year 12 final exams with decisions being made on a case-by-case basis by individual principals who personally know the applicant child and the history of the disability and its long-term effects on the child's exam performances at school.

Such principals have had complete discretion as to which disability adjustments they will and will not approve, and anecdotally, if a highly-credentialed professional has recommended a particular adjustment and provided cogent medical or other evidence in support of that recommendation, those principals will tend to simply approve that adjustment without entering into a bitter conflict with the parents or with the recommending professional.

Other States, such as NSW via its statutory authority, NESA, have traditionally offered comparatively stingy adjustments, with decisions being made by seemingly untrained staff according to confidential unpublished guidelines (see **Part 4.2.8** above), and with limited publicity about how such decisions can be appealed.

Parents, schools and professionals all report that in recent years NESA's guidelines for disability adjustments for HSC final exams are being applied in an increasingly stringent and miserly manner.

It's been suggested that this 'tightening up' constitutes NESA's knee-jerk response to the annual Sydney January festival of biased and ill-informed media coverage of the previous year's HSC students who have received disability adjustments and the kinds of schools in which they were enrolled.

These sensationalised media stories invariably contain copious unfounded and evidence-free assertions to the effect that children attending private schools receive NESA preference over those attending State schools (sometimes with a distinct subtext of 'private schools are cheating'). The implication is that private schools delight in rorting the system and claiming disability adjustments for students who are not in reality entitled to receive them.

However, little consideration is given to the reasons why children with disability may have been enrolled in private schools in the first place (eg, extra remediation and understanding, better pastoral care, and more expert support for the disabilities). Similarly, private schools tend to take the ever-increasingly rigorous and complex application procedure more seriously, and allow their staff sufficient time to prepare and submit applications effectively. Some reportedly employ a person part- or full-time to do little else (canvassed in **Part 4.3** above).

Further, it is in the interests of private schools to enable as many of their students as possible to accurately show on their HSC exams what they have learned and what they can do. Year 12 results and percentages of high ATARs are invariably used by private schools for the purpose of marketing and advertising what is, after all, a business. State schools on the other hand are under no such pressure to maximise the number of high ATARs, as they are not competing for fees with a school down the road.

Clearly the answer to the disparity in the proportion of private and government school students qualifying for adjustments would be not to deny the former their legal entitlements, but rather to facilitate more applications from government schools whose students meet the qualifying criteria. It is possible that many students do not apply for disability adjustments due to the expense of private diagnosis or the lack of awareness around the importance of introducing adjustments in the first place. This is an issue to be addressed by NESA, not compensated for by the private school sector.

It is particularly unfortunate that NESA has succumbed to the pressure emanating from the misleading media reports and has consequently 'tightened up' year after year, with the result that by now, compared to NSW, some other Australian jurisdictions seem to be working from comparatively generous and flexible guidelines.

Children with disability in NSW are accordingly disadvantaged vis-a–vis their peers who are enrolled in more generous jurisdictions. Students with disability in other jurisdictions who complete Year 12 with generous disability adjustments **take their resulting ATARs into the market and compete for university places** with applicants who have completed Year 12 under the far stricter and harsher rules imposed by NESA in NSW.

Obviously, such students with disability in the latter category are thereby disadvantaged vis-a-vis students in the former.

How many NSW HSC graduates are actually missing out on their first choice of university course because the places have already been filled by students with disability from a jurisdiction which had more generous disability adjustments?

8. Some proposed solutions

Children are not in a position to give or withhold consent with respect to the teaching and learning experiences which are imposed upon them in their classrooms. Usually, and especially in the State sector, their parents are not either.

Accordingly, in the disability context, it is the responsibility of others to highlight practices which do not allow children with disability to participate, as far as possible, in their education **on the same basis** as students without disability, and to suggest possible solutions to the problems engendered by the continuing large-scale adoption of counter-productive practices.

Clearly both educators and parents need to be better informed about their obligations and entitlements under the Legislation. In addition, consideration should be given to introducing measures to eliminate, or at least to decrease, the need for disability adjustments in the first place.

This **Part 8** suggests (in random order) some possible solutions to address some of the problems canvassed in the submission, and perhaps to lead the conversation going forward.

8.1 Introduce mandatory teacher training on disabilities and disability adjustments: in-service

In my experience, **the vast majority of teachers do the very best they can for most children most of the time.**

Teachers are generally well-intentioned and have chosen teaching largely because they like children, and they seek to exert a positive influence on children's lives.

Especially in the case of patent, visible physical disability, malformation or disfigurement, the vast majority of teachers will usually do all they possibly can to assist the child.

Problems normally arise when:

- the child's disability is invisible, or
- the child is patently either very clever or of above-average ability, or
- the child does not appear to be failing or otherwise underachieving, or
- the child is not 'the worst I've got in my classroom'.

Despite teachers' generally good intentions and willingness to respond to the needs of children with visible disability, GLD Australia anecdata suggest that most primary and secondary teachers (and even learning and support teachers) have not been formally trained in invisible disabilities – how to identify them in the classroom and how to address them.

Too many teachers are not familiar with disability literature or language, or with federal or state legislation addressing disability, and they are generally unable to read and interpret medical and allied health professionals' reports.
When I lecture on gifted children with disability to teachers in schools, and at the university level to teacher trainees who are about to graduate and become teachers, virtually none claims:

- to have ever had any formal training whatsoever in disability or even something vague such as 'diversity', or
- to have any confidence in their preparedness to meet the needs of students with disability in the classroom, or
- to have acquired any familiarity with disability legislation or policy.

This is remarkable in light of Standards 1.6 and 7.2 of the *AITSL Professional Standards for Teachers* http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list under which even new graduate teachers are supposed to [**emphasis** mine]:

- 1.6 Demonstrate broad knowledge and understanding of **legislative** requirements and teaching strategies that support participation and learning of students with disability, and

- 7.2 Understand the relevant **legislative**, administrative and organisational policies and processes required for teachers according to school stage.

Many educators still erroneously claim to believe that 'disability' is simply a euphemism for intellectual impairment or low IQ. Some even allege privately that such students are accordingly not worth educating at all. What a stretch then for such people to come to terms with the claim that some children with disability actually have a very high IQ (as discussed in **Part 4.2.4** above.)

Others hold that children with any kind of disability fall exclusively within the province of teacher aides, and should not be the responsibility of fully qualified teachers (ie, that the children with the greatest learning needs are best taught by the adults with the least formal training).

When I was invited to give evidence in Canberra before the 2015 Parliamentary Review of the *Standards*, the one point agreed on by all participants from all jurisdictions and representing all forms of disability, was that **teachers in general, while well-intentioned, have simply not received the training about disability and diversity which they require to cope in today's policy-dictated 'inclusive' classroom.**

Less than half (38%) of Australian teachers claim that they feel prepared to teach students with disability when they finish their formal training. This is despite 74% having reportedly been trained to teach in mixed-ability settings as part of their university studies: http://www.oecd.org/education/talis/TALIS2018_CN_AUS.pdf Nearly 30% of teachers in Australia report working in classes where at least 10% of students have some form of disability. There is an increasing body of research suggesting that teachers feel unprepared to teach students with special needs in mixed-ability classrooms: https://theconversation.com/most-australian-teachers-feel-unprepared-to-teach-students-with-special-needs-119227

When teachers seem to, or profess to, know nothing about the *Standards* and their obligations under them, parents tend to resort to printing policies and other documents off government websites and presenting them to schools to support the parent's argument that disability adjustments are arguably an entitlement, not a privilege or a favour.

As noted in **Part 7.5.1** above, such documents tend to pay lip service to the *Standards*, but fall down in the implementation.

For example in NSW, NESA coordinates the implementation of the NSW Government's *Great Teaching, Inspired Learning: A Blueprint for Action* across all NSW schools*.* This document used to be available in the form of a 20-page paper booklet dated March 2013 (of which I have a saved copy), but now seems to be available only as a website rather than as a printable document:
https://educationstandards.nsw.edu.au/wps/wcm/connect/61633907-a9e5-4cd1-aa02-a2a8e9c938bd/GTIL+Report+Card+2014.pdf?MOD=AJPERES&CVID=
('***Blueprint***')

The Blueprint sets out recommended actions reportedly required to improve the selection of candidates for teacher training and to improve the university training given to the students so selected. The Blueprint claims to intend "to ensure that every NSW student in every school and in every lesson is inspired to learn by *great teachers* and *great teaching*" (page 6 of the paper booklet).

In light of such a lofty and commendable ideal, it is strange then that a search of the terms 'disability', 'diversity' and 'special needs' in both the paper document and the website reveals that, for some inexplicable reason, the Blueprint makes no mention of 'great teachers' or 'great teaching' in the **context of students with disability.** Surely students with disability will require both? And surely teacher trainees will require instruction in teaching students with disabilities?

If complying with the *Standards* is supposed to be such a high priority for teachers, why does this Blueprint remain silent when it comes to disability?

To the rescue comes another NSW document called *Classroom Management and Students with Special Educational Needs*
https://educationstandards.nsw.edu.au/wps/wcm/connect/73536b96-73aa-4592-8425-2d0ad17dd89d/ClassroomManagementStudentsWithSpecialEducationNeedsAccess.pdf?MOD=AJPERES&CVID=

This document admits that universities which train teachers realistically can't be expected to have taught graduates about students with disability because: "…*given the diverse range of students with special needs who are now enrolled in mainstream schools, it is highly unlikely that graduating teachers can be prepared with sufficient knowledge to cater for all of the* *students with special needs they will encounter in their first classrooms*" (page 24). At least that is acknowledged.

Instead, advises the same document, the training must be undertaken once the graduates are already teaching in schools: "…*classroom teachers (whether beginning or experienced) need systemic support to address the very difficult and complex task of catering for children who have special needs … Teacher education students once having entered the workforce must be supported by ongoing professional development, specialist staff expertise, assessment and classroom resources and guidance and direction in ways to address learning and support in their classrooms"* (page 24).

Admittedly, the NSW department of education is now offering online training courses for teachers on disability and on disability adjustments, and this is of course a laudable initiative. Except in the case of school principals as of this year, however, such training on adjustments remains merely **optional,** and accordingly is not completed by all teachers - yet all teachers can realistically expect to find children with disability in their classrooms.
As long as the training is voluntary rather than mandatory, the vast majority of teachers will feel justified in continuing with the, "Oh no, we don't have time to bother with that here…" stance.

No one raises such anodyne objections when the subject matter of teacher training and professional development is fire drills, child protection, peanut allergies, CPR, asthma or asbestos. Everyone takes these topics seriously because the training addressing them is not optional but obligatory – consequently a sign that an education provider itself takes these topics seriously.

This is the result which we require for in-service teacher training on disability.

And of course from a wider perspective, systemic training is needed for all classroom teachers, learning and support teachers and school leaders, not only on the *Standards*, but also on the importance of identifying **gifted** children with disability early in their primary schooling (as canvassed in **Part 4.2.4** above).

Teachers need to be introduced to current evidence-based material which is easily obtainable, and which can be revisited on an ongoing basis – perhaps by means of regularly up-dated and well-publicised websites. Such websites might link to short films or clips showcasing the challenges faced by gifted students with disability in a way which engenders teachers' empathy and prompts motivation to learn more. NSW has set a good example with its new gifted policy https://education.nsw.gov.au/teaching-and-learning/high-potential-and-gifted-education/about-the-policy/high-potential-and-gifted-education-policy

Further, teachers whose students must sit State tests and exams such as NAPLAN and the final HSC exams need to understand, and be able to efficiently operate within, the various disability adjustments programs administered by government instrumentalities. As outlined in **Part 7.5** above, these are usually complex, legalistic, frustrating and intimidating, and professional learning is crucial in preparing teachers to persist and to succeed at meeting the requirements of these programs.

Finally, the NSW Department of Education's statistics estimate that approximately **12%** of students may be expected to have some sort of disability or learning and support need, yet when it comes to disability adjustments, how many schools actually provide them to anywhere near 12% of their students? One suburban primary school with an enrolment of 450 had a total of 3 students using disability adjustments for NAPLAN (one of whom had a broken arm) – where were the other 51?

Teachers, however, cannot be blamed for neglecting to notice the 12% of students whom they have never been trained to identify in the first place. Early identification of all learners with disability by skilled teachers would prevent the inception of the self-fulfilling cycle of poor academic self-concept, low self-esteem, learned helplessness, and ingrained underachievement or failure in the early years, all of which contribute to sometimes insurmountable and irremediable problems in later years.

8.2 Introduce mandatory teacher training on disabilities and disability adjustments: pre-service

Consideration should be given also to finding a way that teacher training on disability adjustments could be made compulsory in teachers' pre-service education while still at university.

If a Minister of Education can 'order' all universities to teach phonics (cf: http://www.dailytelegraph.com.au/news/nsw/education-minister-orders-universities-to-teach-phonics-or-face-losing-accreditation/story-fni0cx12-1227019125456) as a pre-condition to maintaining accreditation, could such a decree not also be made in the case of training on disability and on disability adjustments? This would relieve a department of education of the responsibility of having to train all new teachers from scratch once they are hired and are already working in a school.

In this connection, departments of education could explore the possibility of telling their teacher accreditation bodies that, as from X date, the department will no longer be hiring teachers who have not completed university training on disability and on the legislation and policies governing it.

This was reportedly done once before by the NSW department of education in the 80s or 90s, and suddenly all the universities purportedly began introducing compulsory courses in disability.

As a matter of practicality, universities will agree to teach courses in whatever they're told to (witness compulsory Indigenous sensitisation courses) because they want to be able to say to their applicants, "When you finish this degree, you'll be qualified to teach in [name of State]" - so why not courses on disability and the *Standards* as well?

8.3 Introduce a phone advisory line for schools

Another way of providing teachers and principals with practical advice on the *Standards* would be for government departments and authorities to offer some kind of anonymous information/advice/help line for school staff to ring:

- when they are reluctant to admit to government, or in front of their peers, or in front of parents, that they don't know what a disability adjustment looks like, or that they don't know what their obligations are under:
  - the Legislation, or
  - departmental codes of conduct, or
  - the AITSL *Professional Standards for Teachers* - see 1.6 of: http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list (ie, 'to know about, and to abide by, legislation and departmental policies'), and
- when they don't know how to even begin to prepare and submit coherent applications for NAPLAN or the Year 12 final exams.

As new fact situations arise, government lawyers could immediately explain to school decision makers in advance why what the school official may be proposing to do or say would arguably be unlawful under the Legislation and/or contrary to publicly available departmental codes and guidelines. Such an option would allow educators in schools to 'save face' by not inadvertently proffering misleading or incorrect advice to parents and students, and then being obliged to sheepishly retract it afterwards, sometimes during an AHRC conciliation conference.

8.4 Provide notices to parents about the availability of disability adjustments

Perhaps education departments could organise for each State high school to regularly include in its parent newsletter some kind of notice about the availability of NAPLAN and Year 12 disability adjustments and who to contact to enquire about them.

This could be supported by a separate paper notice or flyer or brochure to be taken home by each child and/or distributed at parent/teacher interviews.

Years ago, one member of GLD Australia lobbied to have the following notice inserted in her child's NSW high school newsletter:

> *DISABILITY PROVISIONS FOR THE HIGHER SCHOOL CERTIFICATE EXAMINATIONS: Disability provisions in the HSC are practical arrangements designed to help students who could not otherwise make a fair attempt to show what they know in an exam room. The provisions granted are solely determined by how the student's exam performance is affected and may include braille papers, large-print papers, use of a reader and/or writer, extra time or rest breaks. Further information on Disability Provisions may be found on the Board of Studies NSW website* http://www.boardofstudies.nsw.edu.au/disability-provisions/ *. If you wish to apply for Disability provisions for your son or daughter, please contact ...*

Of course, this notice could be re-drafted for disability adjustments for tests and assessments other than just the Year 12 final exams, using appropriate wording which would allow parents to immediately decide if this is something which they might need to further investigate for their child.

Education departments could also take steps to ensure that each individual State school website contains consistent and useful information about disability and the Legislation in a way which is easy for parents to access (for example, a clearly visible tab on the home page, rather than a buried page embedded under several sub-topics in multiple drop-down menus).

8.5 Seek legal advice with respect to the rhetoric on the websites about blanket 'rules'

In light of the issues raised in **Part 4.2.8** above, government departments and authorities might wish to have their legal advisers review all the blanket, categorical, unqualified assertions, 'rules', prohibitions, proclamations, claims, protocols and pronouncements on their websites, in particular for the purpose of forming a view as to whether any of them arguably fall foul of s. 44 of the *DDA* or ss. 6.2 or 6.3 of the *Standards.*

8.6 Adopt a 'Universal Design for Learning' approach to obviate the need for disability adjustments altogether in some circumstances within the exam context

Although not enshrined in domestic law and hence not enforceable within Australia, Article 2 of the *UN Convention on the Rights of Persons with Disabilities* http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf defines '**universal design'** as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design (page 4).

Universal design for learning ('***UDL***') is an educational framework and set of principles which seek to apply the general universal design concept above to the field of education. Educators are to plan their teaching, curriculum and assessment, as far as possible, in a way which meets the diverse and variable needs of *all* students, and which provides all with equal opportunities to learn, regardless of ability, disability, age, gender, or cultural and linguistic background. UDL provides a blueprint for designing goals, methods, materials, and assessments which can accommodate individual learning differences to reach all students including those with diverse needs.

UDL is different from other approaches to education in that educators *begin* the design process **expecting** the curriculum and assessment measures to be used by a diverse set of students with varying skills and abilities - not a single, one-size-fits-all solution, but rather flexible approaches that can be customized and adjusted for individual needs.

In the context of education, however, UDL seems to have been largely eschewed in favour of a legislative and policy framework which begins with the premise that every student will unquestionably do X, but then sometimes some minority of students (who can prove that their disability means they cannot manage to do X) will be allowed in some circumstances to do Y – but of course only as long as:

- Y is 'reasonable', and
- Y doesn't cost too much ('unjustifiable hardship'), and

- Y could not be seen as conferring some form of unfair ‘advantage’ over all the other students without disability who must do X and cannot elect to do Y, and
- Y could not be seen as interfering with the ‘academic integrity’ of a task or test or exam.

Under this scenario of offering so-called ‘reasonable’ adjustments to students with disability in some limited circumstances, behemoth amounts of time, attention and resources must be devoted to debating and deciding on the exact meaning of variable concepts such as ‘reasonable’, ’unjustifiable hardship’, ‘advantage’ and ‘academic integrity’.

The tension thereby created, and the bitter arguments, threats and legal actions which inevitably ensue, call into question the wisdom of opting for a ‘reasonable adjustments’ approach over a UDL one.

The concept of making ‘adjustments’ is at odds with the UDL approach in many ways. Under the former, teachers must continually retrofit their curricula and assessment tasks to address the needs of those comparatively few students with disability who cannot, for whatever reason, deal with the curriculum or assessments as originally designed and offered to them. Such students with disability then inevitably come to be viewed as some form of burden or nuisance – requiring a busy teacher to devote even more work to each and every task in a sometimes half-baked attempt to offer access and participation for all (or to be seen by others as attempting to do that).

Much of this extra cumbersome and burdensome work could be avoided if educators could simply apply the principles of UDL from the start.

In the context of disability adjustments for tests and exams, would it not make more sense, and would it not save untold amounts of time and money, to devise a scheme which would from the very beginning make all exams accessible to **all** students (with and without disability) without anyone ever having to go out of their way to apply for any kind of special adjustments to an exam designed specifically and only for those *without* disability.

Such a solution would save the time and money of government personnel, school personnel and private diagnosing professionals [and hence parents] and, perhaps more importantly, it would see the end of all the arguing, unpleasantness, uncertainty and interminable but fruitless comparison of who had qualified for what at which school – since everyone would simply qualify for everything.

Below are two examples of how UDL might be applied to the designing of Year 12 exams so that virtually no candidate without physical disability would need to apply for adjustments.

8.6.1 Allow unlimited time, and control output by word limit instead

One of the most contentious disability adjustments (and one of the two which have the reputation amongst applicants of being 'hardest to get' for State exams) is **extra time** to read and/or to write.

And as noted in **Part 4.2.3** above, extra time to address the effects of a disability which results in a slow processing speed, a slow reading speed, a slow handwriting speed, a poor working memory or an uncorrectable vision impairment does not bring the child with the disability up to the level of a child without the disability – it just helps.

Extra time will only partially compensate for the effects of the child's disability, and will in no way confer an 'advantage' on the child. It will not completely enable the child to perform in the exam as well as if they did not have the disability in the first place, or as well as a student without the disability.

Even **with** the extra time, the child with disability will still need to work very hard to properly prepare for their exams, in an attempt to overcome some of the ineradicable effects of their disability.

And, contrary to the facile assumption and unexamined belief that 'of course everyone would perform better with more time', the research has shown that:

- while there is a significant difference between scores obtained by students with disability and by students without disability when both write exams under timed conditions, there is by contrast no significant difference in test performance between students with disability and students without disability when students with disability are granted extra time;

- students without disability do not perform significantly better when allowed extra time than when not allowed extra time;

- when everyone is given extra time, the scores of students without disability do not increase (or do not increase significantly) from what would be expected based on past performance, whereas the scores of those who actually **need** the extra time (ie, students with disability) do indeed increase once they find that they finally have enough time to actually finish the exam; and

- therefore, extra time is an appropriate adjustment for some students with disability.

(Alster, 1997; Cahalan & Trapani, 2005; Cohen, Gregg & Deng, 2005; Fuchs, Fuchs, Eaton, Hamlett & Karns, 2000; Johnson, 2008; Lesaux, Pearson & Siegel, 2006; Lindstrom, 2007; Runyan, 1991; Shaywitz, 2008; Sireci, Li & Scarpati, 2003). [Copies of, or full citations to, these and other similar articles will be supplied upon request.]

One response to the problem of timed exams and their inciting of applications for extra time is of course to opt for **untimed** exams. This is a solution which I have seen in operation with great success in schools in the United States.

This approach entails **controlling output by word limit rather than by time.**

For example:

> *Analyse Juliet's relationship with her father and consider how it might have been different had Juliet been alive today.*
>
> ***Word limit: 1000 words***
>
> *This task can reasonably be expected to take [one hour/two hours/whatever], but you are free to leave at any time or to stay as long as you wish to complete it.*
>
> *However**, no matter how much you write, only the first 1000 words will be read and graded**.*

Consider a student who has not read *Romeo and Juliet,* and has not been listening when the play has been discussed in class, and has not given any thought to the characters' personalities and motivation, or to the historical context and the prevailing cultural views of the time. Clearly such a student in a closed-book exam will not do a good job on this question **no matter how long they choose to sit in the exam room and stare at it.**

No amount of extra time will help such a student – or anyone else (no matter how clever…), if they have not learned their work and properly prepared for the exam.

Extra time will not magically put the answers into the head of a student who has not already done that for themselves long before the exam time starts to run.

If, by contrast, every candidate were to have unlimited time to compose 1000 words, then no one would complain that anyone else has had an unfair 'advantage' – there would be no disability adjustment to apply for, and no fighting and no fuss. No one would wail, "Well **I too** would have done a better job if only I hadn't run out of time – if only I'd had as much time as my friend with disability – not fair!"

Of course the option of allowing unlimited time may at first be greeted by schools with the very reasonable reaction: "But what happens if a few of them are still sitting there at 10:00 at night?"

Experience has shown, however, that while a very few students initially may opt to stay longer than they need with a view to doing the best they can in 1000 words, the vast majority will write what they know, edit and polish it, and leave in more or less the previously foreseen time for completion.

Students soon realise that in a closed-book exam there is no chance of improving their grade if they have already written all they can think of. Everyone will soon understand that the best option for an ill-prepared student is to cut their losses in **this** exam, and go home and get on with studying for the next one. And virtually all candidates will agree that sitting for hours gazing at a question which they can't answer very soon becomes 'boring'.

If however it does turn out that a few students are unreasonably abusing the 'unlimited time' offering, then schools could experiment with giving limited, but exceptionally generous, time: *"This is a two-hour exam but if you wish, you may have four hours to complete it. However, no matter how long you stay and how much you write, only the first 1000 words will be read and graded."*

Under the approach of unlimited or exceptionally generous time, students without disability would write all they know (condensed into 1000 words) and students with disability would have as much time as they need to do the same, just like their peers.

Assuming that the purpose of testing is to assess what students actually **know** (rather than how fast they can scribble it out), who would be advantaged or disadvantaged by such an approach? Every child would have an equal opportunity to experience success and develop confidence in taking exams, thereby arguably decreasing the magnitude of mental health needs associated with exam taking by so many students in the current climate of, "I have to write it all down as fast as I can, and what if time is called before I've remembered everything?"

From a different but related perspective, why do exams have to be timed in the first place? Whose interests does that serve?

Presumably the Year 12 final exams are designed to test a student's knowledge of a subject, not a student's reading or writing or processing **speed**? [In the latter case (ie, a test of sheer speed) of course extra time would interfere with the integrity of the test, contrary to s. 3.4(3) of the *Standards.*]

How many professions and jobs and careers realistically expect employees to be able to do their tasks FAST?

With the exception of people such as those who land airplanes or administer anaesthetic, how many adults need to perform their work under such time pressure? How many need to be able to think that fast?

Surely the answer to cancer or the most effective COVID vaccine will one day be discovered by some slow-thinking, painstaking, meticulous and reflective individual content to sit quietly day after day and year after year looking down a microscope and pondering, "Could it be this? Could it be that?"

One wonders if researchers or lawyers are usually told, "You have two hours to come up with the solution and write it out in handwriting. Go!"

8.6.2 Allow choice with respect to response method (handwriting or keyboard or scribe) and with respect to question paper presentation

Without doubt the second of the two 'hardest to get' disability adjustments is permission to type long prose answers on a keyboard:

- even when such a recommendation has been strongly made in a series of reports from several different kinds of professionals, and
- even if the child has never been able to learn to cursive handwrite and has accordingly been typing absolutely all their schoolwork on a keyboard since Year 2.

In recent years in NSW, NESA has been approving a keyboard only for students who can show that they are unable to use a scribe (see **Part 7.5.2** above).

However, in the context of substituting one kind of adjustment for another, NESA is arguably under a duty to "assess whether there is any other reasonable adjustment that would be **no less beneficial** for the student" (*Standards* s. 3.6(a) [**emphasis** mine]).

For some students with disability, the alternative adjustment (dictating to a scribe) is undoubtedly 'less beneficial' than typing on a keyboard.

Scribing is a learned skill which some have been practising since Year 7. It requires a very different approach to responding to a question, documenting and proofreading and editing answers all at the same time. Scribing thus places some children at a distinct disadvantage vis-a-vis all other students without disability who are able to use their normal well-established exam writing techniques and approaches.

Surely, **expecting a child with disability who has typed on a keyboard since Year 2 to suddenly switch horses in midstream and start to dictate to a scribe at the end of Year 12 is utterly unrealistic.** How could forcing a child to use a scribe instead of a keyboard possibly meet the legislative test of 'no less beneficial' for such a child?

Further, the sophisticated skill of dictating to a scribe is one which virtually no one in the workplace would ever use again since virtually everyone at work now types. Long gone are the days of lawyers pacing up and down their enclosed offices dictating letters to shorthand-proficient stenographers.

Why take a child who has never in 13 years dictated to a scribe, and make them spend untold hours in the thirteenth year learning and practising how to do that proficiently, and then send them off to university or to the workplace where realistically most will never have occasion to use that archaic skill again?

We are currently being inundated with articles advising that the role of education these days is to equip children with so-called '21st Century Skills', and yet at the same time, for their NSW HSC final exams, we require some students with disability to acquire and practise and use a decidedly antiquated one.

Further, some children with comorbid disability will be especially disadvantaged by being required to dictate to a scribe instead of typing on a keyboard, for example:

- if the child also has an **anxiety** disorder, the presence of a scribe might heighten the child's anxiety, eg, "What will the scribe think of me?; Will the scribe be judgemental if what I dictate sounds 'stupid'?; Will the scribe like me?" and all sorts of other irrelevancies which might preoccupy a child with an anxiety disorder but which would not bother others; or

- if the child also has an **autism** diagnosis, the child may be unwilling to sit beside or interact with a stranger, but if the child chooses to instead sit opposite the scribe, the child will have to proofread their responses upside down, or to stand behind the scribe and read over the scribe's shoulder. No other student without disability is required to do this; or

- if the child also has **ADHD** which is not able to be completely managed by a medicine, the child may have difficulty staying focussed on the content of what they are dictating, for example if they have to wait for a handwriting scribe to catch up. Being asked to repeat what they've said instead of continuing to think and dictate new material may cause some with ADHD to lose their train of thought or submit incomplete answers; or

- if the child is unable to read **cursive** writing and can comprehend only typing, then (unless the scribe is typing which would arguably be noisy), the child will be unable to proofread their work before handing it in, unless it is read back to them aloud – and again, 'proofreading' and editing an orally delivered text is a new and sophisticated skill in itself. No candidate without disability is required to master that skill or to read anyone else's cursive handwriting.

Further, the appointed scribe is almost always a child from a lower grade who, though unquestionably well-intentioned, inadvertently makes spelling and syntax mistakes in their transcriptions. And of course those mistakes are then counted against the Year 12 dictator, not the younger child scribe who is doing their best with words they may have never encountered before.

Moreover, not all children with disability can necessarily type faster than children without disability can handwrite.

And not all children with disability will want to.

For example, some years ago on the strength of medical and occupational therapists' reports, one Year 12 girl with disability in a NSW selective high school was granted permission to type on a computer without spellcheck for her HSC trials. She actually did **worse** on those exams than she had ever done on any exams before. Why? Because she simply didn't write enough.

Instead, she spent most of her exam time proofreading and perfecting the little bit which she HAD produced in typing – just because she COULD - ie, because it was tempting to do that on a computer. When the girl was required to handwrite, her short-of-flawless scribblings were so messy and so hard to decipher that even SHE was not game to spend time proofreading and polishing – and so instead she just kept writing more and more content which accumulated more and more marks.

Consequently, for the HSC final exams, this girl chose to handwrite all her answers and she ended up getting top grades.

Clearly for such a child a computer would not have constituted an 'advantage' but rather a distinct 'disadvantage'.

Similarly, some children with disability who know that spelling and punctuation and capitalisation are areas of impairment will opt for a scribe rather than a computer, simply because they know that, no matter how many language errors the younger-grade scribe may make, the resulting text is still likely to be more comprehensible than what the Year 12 child with disability would have been able to type out on a keyboard without spellcheck.

In light of the above, surely the solution is clear: simply allow **everyone** to choose to handwrite or type or dictate as they wish?

Again, there would be no disability adjustments to apply for, and no fighting and no fuss. And no one would complain that of course they would have done better if only they'd been allowed to type or dictate or handwrite or print or whatever happens to be their preference, since everyone could simply choose whichever they'd prefer.

Markers would no longer be able to draw unflattering inferences from the format of the response paper, and students would no longer have to be worried about the inevitable warning, "But as soon as the marker sees that your answers are typed, they'll know who have a disability and they will lower their expectations accordingly."

Along similar lines, what would be the harm in allowing each child to choose the font size for their question papers or the colour of the paper on which the questions are printed, without having to provide evidence of a disability to qualify for these measures? Would enlarged font or coloured paper really advantage anyone who didn't need or want those modifications?

If everyone had such choices, there would be no arguing about exactly how vision-impaired a given child really is, what size font he can and cannot actually see, and which colour paper is easiest for him to read to minimise glare. How much money would be saved on optometrists' and Irlen screeners' reports, not to mention the time devoted by government clerks to deciphering and evaluating them.

And no one would complain that if only they'd been allowed to have blue paper or size 24 font, they would have scored a better grade – as everyone could have had whatever they wished.

8.7 Mandate independent research into whether students *without* disability do indeed always benefit under a full 'inclusion' model

As noted in **Part 4.2.5** above, most proponents of full inclusion allege that inclusive education is of benefit to *all* students, including those *without* disability.

While admittedly this issue is arguably outside the remit of the present Review, I note the points made in **Part 4.2.5** above that some students with invisible disability are increasingly being refused disability adjustments on the grounds that in inclusive classrooms other students with 'worse' disability deserve adjustments more. "Sorry but dyslexia isn't very serious compared to what the child in the next seat has. You're just not 'disabled enough'."

Full inclusion proponents usually claim that the research overwhelmingly suggests that in inclusive classrooms, students *without* disability will benefit too.

I take issue with that statement, and submit that such research needs to be critically reviewed to determine if it is as overwhelming, unequivocal and uni-directional as some claim.

While I agree that there may be some merit in the 'good for everyone' assertion, in terms of the engendering of compassion and understanding amongst students *without* disability, I submit that we need to re-examine counterintuitive claims that *all* students in an 'inclusive' classroom will always benefit from differentiation and inclusion, and will learn as much, progress as quickly, and stay as engaged as they would in a different setting. There is in fact research going the other way, though to date I have not seen it cited in publications favouring full inclusion. All I am told is that, as noted in **Part 4.2.5,** researchers are now being prohibited from engaging in it.

In recent years we seem to have hit a new nadir in meeting the needs of children with disability. The arguments in favour of the currently fashionable 'differentiation' and 'inclusion' models have too many rough edges to merit remaining unexamined and unchallenged.

Politically incorrect as this suggestion may be, perhaps the whole 'inclusion' premise needs to be totally re-tested and possibly recalibrated.

I am not an education researcher and am not qualified to opine on the validity or methodological soundness of studies which have found a decrease in the reading and math scores of students *without* disability in classrooms containing students with disability, when compared to controls in classrooms which do not include students with disability, especially when the disabilities in question are complex and result in unruly, time-consuming, repeated and sometimes even dangerous behaviour. Further, the academic attainment of students without disability then reportedly goes up again, once the students with disability are suspended or otherwise removed from mixed-ability mainstream classrooms.

Admittedly, most such studies tend to be older, and are perhaps thus representative of a time when the inclusion notion was new and ill-understood. On the other hand, perhaps there are fewer more recent studies simply because (as discussed in **Part 4.2.5** above) HDR students and academics are prohibited from conducting them (or afraid to do so).

Perhaps this whole issue could be addressed by the commissioning of independent research to re-examine some of the premises underpinning the concept of universal 'inclusion', and to look carefully at what really does in fact happen academically to students *without* disability under a full inclusion model.

Research questions could focus on the effects of full inclusion on:

- students *without* disability, in terms of academic performance, wellbeing, growing fear of physical injury at school, and the increasing (perhaps COVID inspired?) trend now for some children to start pressuring parents to let the child quit school, and instead do home schooling or online remote learning.
- students *with* non-obvious disability (identified or not), who are quiet and compliant but are struggling to learn and stay on task when they are not receiving the remedial intervention they need in their noisy, chaotic and disordered classrooms 'because another child with a more serious disability needs it more'.
- students with so-called 'mild' disability, who have always been in mainstream classrooms, but who are now being required to take second place to children with disability transferring in from schools for specific purposes. Said one participant in a government consultation meeting:

> *Huh! So you say you're afraid that your child with dyslexia will never learn to read? Well my child will never learn to read either – or speak or walk – or probably even recognise me. What exactly are YOU complaining about?*

I submit that it should never come down to a 'contest' or 'competition' between parents as to whose child is most 'needy' or most worthy of disability adjustments.

- students with disability whose parents have been enthusiastically coached by some disability advocacy associations to insist on enrolling the child at their local mainstream school, even against the parent's best inclinations, and in the face of the fact that educators there clearly do not feel they will be in a position to understand or meet the child's complex needs. Parents who nevertheless choose a school for specific purposes are made to feel ashamed for supposedly letting the full inclusion movement down.

- students with disability whose parents initially agree to enrol their child in mainstream, but soon form the view that mainstream is actually 'harming' their child, in terms of bullying, belittling and sometimes worse, and who thus decide, against the wishes of their advocates, to transfer the child to a school for specific purposes, where the child quickly starts to learn, starts to enjoy learning, is happier, and even gets invited to birthday parties. I still meet parents whose children are now in their early 30s who were pressured into mainstream and blame their child's experiences there for the child's later issues.

- intellectually gifted students (with or without disability):

    - who are learning nothing of the mandated curriculum year after year in inclusive classrooms, not because they are incapable of learning, but rather because they learned it all several years ago, BUT
    - who are now required by the new NSW inclusion ideology to be encased in classrooms with 'similar-age peers', when they really ought to have been accelerated up to more challenging material. Other students' disruptive behaviour and the perpetual disorderly classroom which it engenders just serve to slow the learning pace of these children even further and, as noted above, they start to pressure their parents to homeschool.

It would be interesting also to gather evidence from former students with disability who were 'included' when perhaps now, looking back as adults, they would have preferred to be 'excluded' and to receive remedial intervention in a separate setting. They could be asked, for example:

- Did you enjoy knowing that you were always the slowest in the mixed-ability class in X subject?

- Did you like having all the others know that you found learning or reading or writing or math so very difficult?
- Were you pleased that your teachers always had to go out of their way to ‘differentiate’ the work just for you?
- And in any case, did your teachers actually bother to do that? Did you find it helpful?
- How did others in your classes respond to your need for what they may have considered to be ‘special privileges’?
- Would you rather have been grouped separately with other students experiencing the same disability as you – so that no one would laugh at you, so that you would feel a greater sense of belonging, and so that there would be no stigma attached to the disability?

The point is that not all children with disability always *want* to be included in the mainstream class.

Said one young girl with multiple disability upon climbing into the car one afternoon after school:

> *From now on, could I go to a different school where all the other kids have the same problems as me? I’d like to be in a class where everyone else is having trouble learning to read, and paying attention, and holding their pencil properly so it doesn’t hurt, and printing between the lines so it doesn’t look sloppy. I can’t do any of those things, but most of the other kids in my class can. And sometimes they make fun of me and call me ‘stupid’.*
>
> *So I figure if everyone in the class had the same problems as me, then no one would laugh at anyone, and we’d all be happier and be able to make more friends. It’s no fun to go every day somewhere where most of the other people are better and faster and smarter than you – and the teacher likes them more and doesn’t yell at them or call them lazy.*

Often frustration arises where a child with disability participates in a mainstream setting, but finds it very difficult to make friends with age peers, particularly if they're children in the latter stage of primary school or the early stages of high school. Accordingly, while there may be the best will in the world to enable the child to participate in a mainstream setting, it sometimes just doesn't work. That can be bitterly disappointing, both for the parents and also for the school. And it can be bitterly disappointing for advocates who want a child to have every opportunity to work well and achieve in a mainstream setting.

But the reality is that mainstream settings aren't always going to be the best place for all children. The limits are not always limits based on how much money is spent, or how many teachers' aides are employed to enable the child to participate in the mainstream setting. It's just that the match doesn't fit. That's very difficult for some to accept because the whole object of disability discrimination law is supposed to be to ensure equal opportunity.

In some cases, however, treating people differently is a way of achieving equal opportunity; it's just a different way of doing it.

If this recommendation were to be pursued, I would suggest that the person selected to lead the research be an academic who has a special education background, but who does NOT already have a long list of published papers favouring inclusion. And a way would have to be found such that teachers could contribute their true views anonymously, so that they could feel confident to relay to the researchers what they currently dare to whisper only to each other and to me, and so that they would not find themselves in breach of their teacher codes of conduct prohibiting public criticism of the education system or teaching profession.

Because of my general interest in this area, and in light of the number of children (with and without disability) whom I have seen damaged over the last decade by a full-inclusion model, I have been collecting so-called 'anti-inclusion' articles and other such literature for years, and am happy to share these, should this recommendation be considered worthy of being pursued.

8.8 Provide for professional diagnosis of disability and assessment of degree of impairment in schools at no cost to parents

The equity issue

As noted in **Part 4.7** above, some wealthy parents (and sometimes grandparents) can afford the very best medical and other private professionals' assessments for their child with disability. With seemingly unlimited money and unlimited time, they can and do consult multiple highly-credentialed specialists and collect numerous well-written and well-argued reports strongly recommending disability adjustments.

On the other hand are those parents who rely on Centrelink payments and who must queue for services from medical professionals who will agree to bulk bill, or from allied health professionals who work in the public sector and charge little or nothing.

I have noticed over the years that the more professionals' reports a parent is able to accumulate, the better are the chances of success at first instance when applying for disability adjustments, both for in-class activities and for tests and exams, especially when six or seven different kinds of professional are recommending the same or very similar adjustments.

I note in this connection too that some jurisdictions' statutory authorities require that all assessments be re-administered and all professional reports be updated in the lead-up to the Year 12 final exams – ostensibly to make sure that, in the intervening years, a previously diagnosed and documented disability has not simply 'cleared up'.

Private psychometric and disability assessments by skilled professionals can be very expensive. Some university psychology departments can administer less expensive ones, but these tend to be performed by undergraduate students or interns under supervision (with of course the consequent decreased probative value which their reports then carry). Most public child and adolescent health services cannot or do not offer them.

In summary, wealthy parents can afford to obtain the requisite reports. Many less wealthy parents cannot.

This patent inequity based on wealth is of great concern.

It should not be a contest to see who can pay for, collect and thus submit the greatest number of costly professionals' reports.

Why don't teachers just do it?

Teachers are the first to concede or explain that they have not been trained to administer the requisite diagnostic tests, nor do they have time to do that on an individual basis. Some full inclusion proponents claim that performing such professional assessments is something that can easily by learned by mainstream teachers during a weekend crash course. That is clearly unrealistic. Developmental paediatricians, allied and health professionals train for years at the tertiary level before they are allowed to administer the tests and report on the results. How can all those years of learning possibly be replaced by a short introductory course?

As noted above, too many mainstream educators have never been trained to respond to the needs of students with disability, and during their training have never been led to believe that they would have such a huge diversity of needs in their mainstream classes. They report, "I didn't sign up for this."

As mentioned in **Part 8.1** above, the vast majority of teachers will do the best they can for most children most of the time. But how are they expected to cope when faced with students who show up with inches of professionals' reports diagnosing conditions which teachers have never heard of. When they learn that such conditions are usually responded to and treated or supported by allied health professionals or special education teachers who have spent 4 years at university learning how to do that, teachers wonder how in the world they are expected to come up to speed after a weekend crash course.

One teacher summed this up as follows:

> *If I had wanted to be a nurse, a social worker, a psychologist, a speech/language pathologist or an occupational therapist, I would have enrolled in one of those courses at university. But instead, I wanted to teach children how to read and write and do arithmetic. That's all I was taught how to do at university. Now suddenly I am expected to do so much more! I signed up to be a teacher – not to save the world or cure all of society's ills. I signed up to play by the rules, but now I find that the rules have been changed after the game has begun.*

Interestingly, this conundrum has been raised recently in the Sydney press: https://www.smh.com.au/education/schools-forced-to-address-deficiencies-in-health-system-professor-warns-20200903-p55s6x.html

Teachers tell me that they would of course welcome some type of short professional development in improving their ability to initially spot some of the more subtle, elusive symptoms of unidentified disability. However, teachers are interested in gathering symptomatic information to pass on to someone more qualified within the school. They are not looking to add yet another task to their seemingly unending list of responsibilities.

School counsellors, school psychologists and guidance officers (however called) in State schools in some jurisdictions are sometimes qualified to undertake the required testing and formulate recommendations for disability adjustments. Some however are not. Others do not wish to do this because of the continuing involvement with parents which it necessarily entails. Most are simply too busy serving multiple schools and addressing the needs of students with severe and sometimes dangerous behaviour issues which of course are always seen by principals as the first priority.

Whatever the practicalities of the ultimate solution, a way needs to be found so that all children with disability can have their degree of impairment independently assessed and measured by competent professionals on a wealth-blind basis.

8.9 Implement the recommendations of all the former reviews and inquiries

We seem to have had many years of Inquiry after Inquiry, Review after Review, and Committee after Committee at both federal and state levels, each charged with looking into this, that and the other aspect of disability in education, and all eventually producing shiny comprehensive reports with lists and lists of well-considered and evidence-informed recommendations.

Examples include:

- The 2017 **NSW Legislative Council** report *Education of students with a disability or special needs in New South Wales* https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/6114/170921%20-%20Final%20report.pdf whose 39 recommendations were accepted in principle by government and are still being considered for implementation, though some led to the drafting of the new NSW *Disability Strategy*; and

- The 2017 **Review of education for students with disability in Queensland state schools,** Queensland Department of Education and Training (Deloitte Access Economics) https://education.qld.gov.au/student/Documents/disability-review-report.pdf whose 17 recommendations (see Appendix A of the final report) could well serve as a topics list for the Review; and

- The 2016 **Review of the Program for Students with Disabilities in Victoria,** Department of Education and Training, which identified a number of limitations with the current structure and proposed 25 recommendations; and

- The 2016 **NSW Auditor General** report *Supporting students with disability in NSW public schools* https://www.audit.nsw.gov.au/our-work/reports/supporting-students-with-disability-in-nsw-public-schools with its long list of laudable, but hardly novel, recommendations (beginning on page 4) as to what the NSW Department of Education should do in the context of students with disability. While this report expressly excludes the work of the NSW statutory authority, NESA (page 34), reference is made on page 16 to a list of (impliedly recommended…) adjustments for students with disability, and amongst these is 'additional time and/or rest breaks for assessment tasks' – the very adjustments which are so appallingly difficult to obtain for the HSC final exams; and

- The 2015 **Review of the *Standards*** which recommended that the States "improve continuity and consistency of adjustments between classroom and assessment contexts" - Recommendation 12 on page ix here: https://docs.education.gov.au/system/files/doc/other/final-report-2015-dse-review.pdf ; and

- The 2015 **Senate Committee Inquiry** into *Current levels of access and attainment for students with disability in the school system, and the impact on students and families associated with inadequate levels of support*, whose final report entitled "Access to real learning: the impact of policy, funding and culture on students with disability" http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/~/media/Committees/eet_ctte/students_with_disability/report.pdf again presented 10 very sensible, but hardly novel, recommendations to address the very concerning scenarios which members of the Committee had encountered in their public hearings and in the written submissions which the Inquiry provoked; and

- The 2010 **NSW Legislative Council Parliamentary Inquiry** into *The Provision of Education to Students with a Disability or Special Needs* https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5342/100716%20The%20provision%20of%20education%20to%20students%20with.pdf, many of whose 31 aspirational recommendations could be simply copy/pasted into the present Review's final report and 're-recommended' since they remain today largely unaddressed and unoperationalised.

Why have the recommendations of so many of these inquiries and reviews gone largely unimplemented? I note that, in the case of the 2015 Review of the *Standards,* this outcome is expressly acknowledged on page 3 of the Discussion Paper.

In preparing the present submission, I reviewed my past submissions to virtually every one of the inquiries listed above. In no case did I think, "Oh good! *That* issue is no longer arising. It's been fixed. So I won't include *that* again."

Year after year, we are noticing no, or only very slight, improvements despite all the money and time devoted to inquiries in which we all tell each other the same concerns we have been raising seemingly forever.

As well as inquiry after inquiry, there is a continuing plethora of government publications purporting to describe and explain the relevant disability legislation and educators' responsibilities under it.

Some examples:

- The federal education department has published some practice '**exemplars'** to suggest to schools and parents what might qualify as 'reasonable' adjustments under the *Standards* in the proto-type circumstances described therein: https://docs.education.gov.au/documents/exemplars-practice . Ironically some of the examples include recommended adjustments which, for HSC final exams in NSW, are almost impossible to have approved.

- The federal education department has also published a 'national resource' called '**Planning for Personalised Learning and Support**': https://docs.education.gov.au/system/files/doc/other/planningforpersonalisedlearningandsupportnationalresource.pdf containing a variety of lists of lofty-sounding advice – and yet again, statutory authorities so often fail to comply with that very advice when it comes to the Year 12 final exams.

- The Education Council has published guidelines on its **NCCD** website and offers online **courses** about how to comply with the governing legislation: https://www.nccd.edu.au/sites/default/files/2020_nccd_guidelines_accessible_final.pdf and https://www.nccd.edu.au/resources-and-tools/professional-learning.

In spite of all of the foregoing inquiries, pronouncements and courses, things in general still don't seem to be improving greatly for children with disability in education [universities being a notable exception to this generalisation, but sadly, as mentioned in **Part 9** below, so many students with disability will never get to go to university, where their needs will be respectfully and adequately addressed, because they can't or won't stay on until, or ever get out of, Year 12 in the first place].

We have year after year of piecemeal policymaking that too often proposes replacing one non-evidence-based, unsuccessful but formerly very shiny thing with more of the same.

Instead of:

- striking more and more committees to conduct more and more costly and time-consuming reviews and inquiries, most of whose recommendations eventually come to naught, and

- publishing more and more aspirational but unenforceable guides on how to implement all the various legislation which is already in force,

could consideration perhaps rather be given to simply reviewing all the excellent reports of past such initiatives, and deciding once and for all which of their many well-considered recommendations to implement – and then simply getting on with implementing them?

A recent email sending me a link to yet another Inquiry inviting submissions ended, "But don't worry if you don't have time to put in a submission to this one, because in a few months there will most likely be another Review set up to consider the findings of this Inquiry" – and so it goes….

Nothing would make advocates happier than if the Review's final report could end up being the definitive last one for the next few years.

9. Why is all this important?

The general principle that children with disability should, as far as possible, be afforded equal access to all aspects of their education is enshrined in domestic statute yet frequently unrealised in practice.

Australia has strong laws but weak will.

One wonders if there is any other Australian legislation in the face of which adults feel confidently justified in asserting, "Well yes, that may be the law, but we can't be bothered with that here – so we won't. And anyway, even if we don't obey the law, what are you going to do about it?"

I note the last sentence on page 1 of the Discussion Paper: "An education provider must comply with the Standards, or it will be acting unlawfully." I suspect that far too many education providers' reaction to this statement is simply, "Yeah, so what?"

Parents wonder: is disability discrimination legislation really a law? Or a flaw? Is there not a sharp disconnect between the original intent of the Legislation and its current application?

The implications of systemic failure to effectively implement disability adjustments under the *Standards* are serious for **all** children with disability. For intellectually **gifted** children with disability, however, such failure highlights the huge and dangerous difference between:

- on the one hand, **high achieving** gifted children with disability who will grow up to make remarkable contributions to Australian society, and

- on the other hand, **underachieving** gifted children with disability who may struggle through school feeling angry, misunderstood and frustrated, and who accordingly may later elect to turn their high intelligence to somewhat less worthy pursuits.

Can the problems faced by gifted children in this context hold a candle to the tragic experiences of those children who undoubtedly will be described in shocking detail in other submissions to the Review – for example, children with disability who have been tied to desks or locked in cages?

Of course not.

Nevertheless, intellectually gifted children are those who have the greatest potential to become Australia’s next generation of leaders and innovators, and ultimately the greatest potential to contribute to the economic and social welfare of the nation.

This portion of today’s school population will produce tomorrow’s outstanding inventors, vaccine hunters, mathematicians, engineers, airline pilots, poets, judges, and creative business executives. Meeting their needs at school now is unquestionably central to building the future economic prosperity of Australia.

In an age where knowledge creation and innovation are of paramount importance, gifted children (with and without disability) are the nation’s greatest resource, and neglecting their needs will risk leaving our nation behind in an increasingly competitive world.

If we squander this resource, and if we offer this group of children a mediocre education today, we doom ourselves to a mediocre society tomorrow. And we consign the children to an equally mediocre adult life.

How many of today’s gifted children with disability will never have an opportunity to climb up onto one of Australia’s pedestals? And how would we ever know?

Because of a prevailing community acceptance of the Australian ‘tall poppy syndrome’, advocating for gifted education and the rights of gifted children (with and without disability) is usually a Sisyphean battle. Advocates are sometimes seen as pushing for special treatment so that a small number of purportedly already privileged Ferrari-brain children can progress even faster and outpace other, less able children even more efficiently.

This myth is countered by the number of gifted children who have so much trouble finding a reason to stay in school in mixed-ability classes with age peers, where neither their academic not their social needs are being met. Gifted students with disability additionally have twice as many reasons to want to check out of school early, if neither their giftedness nor their disability needs are being acknowledged in even the most perfunctory of ways.

Whenever an intellectually gifted child decides to discontinue their education for any reason relating to the child’s concomitant disability, Australia has arguably lost one more potential contributor to our next generation of leaders.

Forcing children with disability (gifted or not) to do their schoolwork and take their tests and exams for 13 years without their professionally recommended disability adjustments is tantamount to requiring a vision-impaired child to undertake such tasks without wearing their glasses.

Obtaining appropriate disability adjustments should not be a matter of 'luck' – a lottery whose result depends largely on:

- which school a child happens to attend, and
- whether that school happens to have sufficient experienced and knowledgeable staff in a given year to introduce the in-class adjustments for students with disability and to prepare and submit cogent applications for disability adjustments for NAPLAN and for the Year 12 final exams, and
- whether a child happens to have parents able to navigate and continually do battle with an intimidating, inflexible and ill-informed system.

Repeated academic failure or academic under-performance over many years sees the child's resilience meter stuck on zero, with the result that their school underachievement may be expected to solidify into an entrenched pattern, even after leaving school.

I cannot emphasise enough the disruption, stress and trauma experienced by countless families whose children with disability are being denied disability adjustments.

Bitter conflict is occasioned by:

- a child with disability wishing to apply for adjustments, but a parent not agreeing, or
- a parent wishing to apply, but a child not agreeing, or
- one parent wishing to apply, but the other parent refusing because they are unwilling to admit outside the family that their child has 'anything called a disability', or
- a school wishing to apply for adjustments for NAPLAN or for the Year 12 final exams, but the parents not agreeing, or
- the child and parents wishing to apply, but a school not agreeing, or
- the child, parents and school all in agreement about the application, but the government authority's staff vigorously discouraging the application, or
- the government authority's demanding to see updated medical and other professionals' reports, and:

- the parent refusing to comply because all the expensive reports already obtained have noted that the disability is permanent and not likely to ’clear up’, or
- the parent agreeing, but the child refusing to attend any more appointments or undergo any more professional assessments because “I’ve been doing that all my life”.

Sometimes, the resultant distended unpleasantness and anguish go on for months and months. The arguments become ever more acrimonious and the positions ever more entrenched. Some families have disintegrated under the pressure.

As outlined by the Disability Discrimination Commissioner at the beginning of the Review’s 23 July webinar, we know that the outcomes for students with disability are generally worse than for students without. Fewer students with disability complete Year 12 or undertake or succeed at university study, and fewer gain full-time suitable lucrative employment. As adults, more end up with a lower income than employees without disability.

By not providing the appropriate assistance when students with disability are little, are we determining in advance that for the next 60 years they have a greater chance of draining the welfare system than contributing to the taxation one?

Allowing children with disability to obtain approval for professionally recommended and documented disability adjustments while at school is but one way to address this situation.

Realistically, with respect to gifted students, disability adjustments can make an enormous difference to the future of a very clever child with disability: the difference between an ATAR 99 and 93 has huge implications for tertiary study – the difference between 69 and 63 less so.

Ironically, once gifted students with disability finally manage to enrol in university, where the disability officers are well trained and the Legislation much better understood and enforced, these students’ difficulties in obtaining adjustments usually disappear. This is especially so at tertiary institutions because students’ grades are not bell-curved and put on ‘ladders’. Consequently, disability adjustments are invariably granted as of right once the qualifying medical and psychological evidence is produced. The university disability officers invariably express shock and surprise that an identical application to a government authority for identical adjustments for the Year 12 final exams the previous year had been rejected.

The tragedy is, however, that too many gifted students with disability never actually succeed in obtaining the ATARs required for entrance into their preferred tertiary courses in the first place.

In some cases, their unaddressed and unsupported disabilities prompt them to want to drop out of high school early, and anecdotal evidence indicates that an indeterminate number do just that.

In other cases, their giftedness and their already 'adequate' school performance are raised by a government authority as an excuse to reject their applications for their Year 12 final exams – adjustments which they need in order to show on the exams what they have learned and what they can do **on the same basis** as a student without disability – and hence to obtain the ATAR required to be accepted into their desired course at university.

After 15 years of advocacy for gifted learners with disability, I am weary from hearing stories of a child with an IQ in the 99.7 percentile wanting to drop out of school, when that child knows more about insects and rockets and Marxism and Oliver Cromwell and magic realism than I (or, I daresay, other readers of this submission…) will ever know – or care to know. How sad that a gifted child's journey through school has to finish up in this educational cul-de-sac.

Every gifted child who decides to drop out of school for whatever reason is a tragedy.

What will be the long-term implications for Australia of gifted students not proceeding to tertiary education?

Who are all the Australians who are currently every day working round the clock in labs, searching for a COVID vaccine or an instant screening test or a treatment or cure? They are gifted children, grown up – gifted children who, for whatever reason, managed to get through school and score the ATAR that they needed to study medicine or medical science at university. We need these gifted adults now more than ever.

There are many potentially life-changing consequences arguably flowing from schools' and government authorities' so-called 'decision' to refuse to approve disability adjustments or to refuse to allow a student with disability to continue using adjustments which they have had approved many years before on the strength of cogent medical evidence, and which they have been relying on ever since.

My volunteer work over the last 15 years has revealed an untold number of individual cases where a gifted child with disability has suffered as a result of having disability adjustments refused, either all the way through school, or just for the Year 12 final exams.

By way of one particularly poignant and heart-breaking example, an intellectually gifted and high-achieving student with disability had been using disability adjustments for years for all their exams on the strength of copious amounts of medical evidence regarding a measurable *physical* disability. At the eleventh hour, the adjustments were summarily withdrawn for the Year 12 finals by the relevant statutory authority, reportedly on the grounds that, "But you're so smart, surely you'll *pass* anyway."

Having failed to have the decision reversed despite multiple appeals submitting further substantiating evidence, the student had to attempt these important Year 12 exams in an unaccustomed way for the first time since primary school.

As a remarkably ambitious scholar and hard worker, this student had for years had their heart set on a particularly prestigious university course whose cut-off ATAR was **98.2**. That course was especially attractive, as it featured an all-expense-paid semester at a prestigious overseas university.

Without the disability adjustments for the Year 12 finals, the student received an ATAR of **98.0** and accordingly was not accepted into the coveted course. The student was told that they could instead enrol in a different, similar course at the same Australian university and then, having obtained good grades in first year there, could perhaps transfer across to the desired course later on. However, that option would not entitle the student to participate in the semester overseas, as this was reserved exclusively for applicants who had obtained the requisite ATAR of 98.2.

The reality is that **.2** of an ATAR can be life-changing for some students with disability.

Of course, the implications of an ATAR score apply to *all* students, with or without disability, but in the case described above, the strong likelihood of obtaining an extra **.2** with the formerly-approved disability adjustments made the outcome especially tragic.

10. A final provocative thought

Unless a serious attempt is made this time to address some or all of the issues outlined in this submission with respect to the availability of disability adjustments in the context of education, the Review's final report will be simply tossed onto the pile of unfortunate reports of all the former well-intentioned inquiries and reviews listed in **Part 8.9** above, and the Review's undoubtedly laudable recommendations will similarly be papered over and eventually come to naught.

In their 2010 testimony before the NSW Legislative Council Parliamentary *Inquiry into the Provision of Education to Students with a Disability or Special Needs*, a solicitor representing the NSW Disability Discrimination Legal Centre made reference to school meetings which end with parents, teachers and principals throwing chairs at each other: https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/8969/100510%20Corrected%20transcript.pdf (page 85).

To date I have not attended a school meeting with parents or teachers who have thrown chairs, and no chairs have been thrown at me.

Sadly, however, I do understand profoundly how a parent-school relationship might deteriorate to the point that this option may actually seem attractive.

There has to be a better way. Please this time, let's find it.

11. Further information and contributions

I am grateful for the opportunity to make a submission to the Review, and GLD Australia would of course be very pleased to provide further information with respect to the issues raised here, or to otherwise collaborate with you to pursue the Review's goals.

I have already attended the Review's webinars https://disabilitystandardsreview.education.gov.au/videos/#webinars and participated in the four-day online discussion board held for education providers/professionals and academics over the period 1-4 September.

I am also happy to appear and give oral testimony at any future public hearings or to participate in any focus groups which are to be held in Brisbane or Sydney or online, and to answer supplementary questions with respect to this submission.

APPENDIX A

(relates to Part 4.2)

Examples of excuses proffered by teachers and school officials to justify a refusal to implement professionally recommended disability adjustments for gifted students with disability

- *The school cannot understand your professionals' reports recommending the disability adjustments and no one here knows the meaning of some of the words in the reports, so we won't implement the report's recommendations*

- *Our school has a policy of not 'labelling' children, so we can't accept the diagnoses made by this professional in this report*

- *We don't believe in dyslexia here*

- *Providing any extra assistance or support is your responsibility, not ours*

- *Assistive technology will make schoolwork too easy for your child – they will become 'soft'*

- *NDIS will not fund assistive technology if it is to be used at school. So you can't let your child bring it to school*

- *Your child may have an IQ in 99th percentile and a processing speed in 35th percentile, but 35th percentile still qualifies as 'average' and so it does not qualify as a 'disability' and accordingly we don't have to do anything about it*

- *The issue diagnosed by the professional was called a mere learning '**difficulty**' and not a 'real' disability, and accordingly your child is not entitled to the protection of the Standards*

- *We can't 'see' the disability - so it's not there*

- *The school will not accept this professional's report because the author is a paediatrician or a language pathologist or a psychologist or an occupational therapist, and the author has no teaching qualifications and only teachers understand what children need in the classroom*

- *The school has separated all your reports into 2 piles: one for reports from people who are teachers, and one for reports from people who are not. The latter are rubbish, and only the former will be considered.*

- *The school will not accept this medical professional's report because it is full of spelling and grammar mistakes [possibly why the author had chosen to study medicine instead of journalism?]*

- *The specialist or doctor authoring this disability report is not 'registered' with the Department of Health/Department of Education*

- *Our school has a policy of not accepting reports from language pathologists because they don't know anything, so if you want these disability adjustments you'll need to get all the tests re-done by a psychologist*

- *We don't have to implement the recommendations in this professional's report because we don't agree with them – after all, who is paying the writer's fees? Some professionals will write anything in reports just to get paid and keep their clients happy*

- *I am the Principal here and I can pick and choose who in my school gets disability adjustments and who doesn't and which kinds of adjustments I'll grant and there is no appeal from my decision*

- *….the Disabilities **Act** (sic) **asks** (sic) us to… [ie, the principal who wrote this was purporting to use the federal disability discrimination legislation to justify why the child would **not** be receiving disability adjustments, but did not know the correct name of the legislation and did not understand that legislation in general does not 'ask' educators to do anything – it **tells]***

- *Well I did some online training on the disability legislation and it doesn't apply to your child*

- *Schools are designed for mainstream needs and cannot cater for children who are either gifted or have learning disabilities (let alone both together)*

- *Your child could not have ADHD – he just needs to learn to concentrate more…..*

- *Well I actually don't think your child has dysgraphia and I think this occupational therapist is just making up this diagnosis to please you. I asked your child to write out a sentence for me and I could read it just fine so it couldn't really be dysgraphia [the OT had not alleged that the child could not handwrite at all – ever - but rather that the* *child could not handwrite in an exam situation, hour after tiring hour, and when the child is stressed and anxious]*

- *Disability adjustments are allowed only for certain disabilities – ADHD is not one of them [NB: obvious confusion between 'funded' disabilities and 'unfunded' ones]*

- *The disability described in this report is not a 'registered' disability*

- *Disability adjustments are never available for assessments which don't 'count' towards a child's final grades*

- *All learning disabilities are identified in early childhood. Your child is 12 and accordingly, despite your specialists' reports, your child could not have a disability – or if he did have one, then it must be gone by now*

- *Oh no, there is no appeal for NAPLAN disability adjustments – it's either yes or no - and that's that*

- *Your child needs to learn to copy off the board now because they'll need to do that in lectures when they get to uni*

- *Well there are no disability adjustments for the HSC or at uni so you'd better learn to manage without them now*

- *Your child must simply learn to handwrite as there will be no possibility of a computer or scribe or extra time for the Year 12 State exams later on.*

- *Disability adjustments are only for low IQ children or for children who are failing or have visible physical disabilities – your child is already clever and not failing – in fact, he is doing better than most, and the fact that he is striving to do better, in spite of his disability, is irrelevant – he will still manage to 'pass' the tests without the adjustments*

- *Your child is too smart to have a disability but not smart enough to do better in school – as parents you must lower your expectations for him as he will never be able to live up to them. Face it, your child is just average and there is nothing wrong with average*

- *Your child is so clever that if he is allowed to have extra time for exams, he will probably 'beat' the student who is currently standing first in the class and who is probably going to be this year's dux – and then that child's parents may complain*

- *IQ tests don't mean anything – believe me, I can tell a bright child just by looking, and your child isn't one*

- *Scribes for NAPLAN are approved only for children who break an arm – not for children with ASD just because they have trouble putting their thoughts down on paper – all kids have trouble doing that*

- *Yes it's true that your Year 6 child has a measured reading ability at the Year 1 level – but he's such a good looking boy, I wouldn't worry too much about it*

- *Your child cannot have the recommended disability adjustments because the department of education rang the school and spoke to the school counsellor/guidance officer who said they had never met or heard of the child, and therefore the child could not have a disability because all children with disability have bad behaviour and are thus always well known to the school counsellor/guidance officer*

- *Your son was accelerated from Year 5 to Year 7 and so is in the unusual position of writing NAPLAN two years in a row. We accept that he had disability adjustments for NAPLAN last year in Year 5, but if he is smart enough to be accelerated, then he couldn't have a disability and your professionals' disability reports must be wrong, and so your son cannot have disability adjustments again this year in Year 7. By applying for them, you are attempting to obtain an unfair advantage for him*

- *Your child can't have this disability adjustment because I have plenty of others who are doing worse and they haven't applied for it (ie, I expect you to feel better about not getting your child's needs met at school if you think that I am not meeting other students' needs either)*

- *As a teacher I need to be concerned about* ***all*** *my students, not just your child – providing your child with what they need to succeed at school might take my attention away from some of my other students [cf, imagine a doctor saying this to a patient with respect to their other patients…]*

- *Your child with dysgraphia cannot have access to the recommended computer in class because another child might trip on the cord, or because 'then everyone would want one', or because the parents of other children might complain since your child is not failing, and the adjustment might be seen as an advantage over other children and hence unfair*

- *No your child cannot have an alternative means of assessment, whether the subject being assessed is English composition or whether it is something else such as science. All assignments for every subject* *must be done in handwriting, and there is no possibility of other avenues such as PowerPoint or oral assessment/speeches. Anyway, offering alternative means of assessment would make it too hard for me to compare the marks from student to student, and I have to be able to rank them.*

- *Being allowed to present a PowerPoint instead of a handwritten essay might advantage your child*

- *I'm sure you wouldn't want us to do anything special for your gifted child just because they have disability, when there are so many who are doing worse. How can you justify asking our teacher aide to take time away from a Down Syndrome child to offer your gifted child these disability adjustments?*

- *Your child had disability adjustments last year but now her grades are starting to improve so we're not going to let her have them anymore [ie, the adjustments are obviously working, so let's withdraw them]*

- *We don't give slow runners and slow swimmers a head start in the Olympics, so why should we give slow thinkers and slow writers extra time and a word processor in school exams*

- *Disability adjustments simply amount to 'cheating' and it is not in the interests of a child's moral development if they witness their parents encouraging cheating*

- *Allowing the recommended disability adjustments would send the message to your child that they are entitled to 'special treatment' but when they grow up, they won't be getting any 'special treatment' from the telephone company or the tax office*

- *Your child doesn't need these disability adjustments – he'd soon start to get better marks if you punished him for bringing home bad ones*

- *Allowing the recommended disability adjustments would damage your child's self-esteem by sending the message that there is something 'wrong' with the child. Just as a child who has poor eye sight must come to terms with the need to wear glasses, so a child with a learning disorder must come to terms with the fact that they are just not very bright*

- *If we allow your child to have these disability adjustments he'll be the only student in the school having them and that may cause him stress, as children don't like to be seen to be 'different'*

- *Your child is lazy and you are just making silly excuses for them. Your child is clearly very bright, and should be able to get by without the disability adjustment which you are requesting and which this professional is recommending. I'm sure he could write faster if he really 'wanted to'*

- *You are an over-protective, pushy, unduly ambitious parent, and by bringing in this so-called evidence of a disability, you are attempting to gain an advantage for your child. Face it – despite all your IQ tests and disability reports, there is nothing wrong with your child – they do not have a disability - they are simply not very bright*

- *Our school has a policy of offering only 5 minutes' extra time per hour and this professional has recommended 15 – so we'll give 5 but not 15 [cf will 5 minutes actually address a child's disability in any meaningful way?]*

- *Yes your child qualifies for separate supervision but we have only one suitable room for that, and an intellectually impaired child needs it more*

- *Before your child can continue to have disability adjustments, we will require updated professionals' reports so that we can be sure that your child's ADHD, dyslexia, etc has not 'gone away' or 'cleared up'*

- *You can't have this disability adjustment for your son because I have a daughter with special needs and she is more impaired than your son, but she doesn't have this adjustment and I have not asked for it. I don't ask her teachers to do for her what you are asking me to do for your son (ie, I expect you to stop being an effective advocate for your child with disability because I myself have been an ineffective advocate for mine)*

- *There is another child in my class who has the same problems as your son but his parents aren't as rich as you and they can't afford to go get some fancy-dancy professional to write a report on their child – I can't give disability adjustments to that other child and so it wouldn't be fair to give them to your son either*

- *Yes we accept that your child experiences great hand pain from being required to handwrite but we won't grant extra time as that would just allow the pain to go on for longer [tantamount to saying, "We know that it hurts you to run fast so we're not going to give you more time to allow you to run slower, in case that hurts you more…'*

- *Yes we acknowledge that your child has Tourette's Syndrome and has hand tremors outside the child's control – but they're not really all that noticeable so they couldn't be important, and so this professional, in* *recommending that your child have access to a computer for exams instead of having to handwrite, is just trying to obtain an unfair advantage for the child*

- *Yes we acknowledge that your child experiences hand pain when being required to copy lots of material off the board, but no he is not allowed to use his phone to photograph the board instead and neither is he permitted to type – because then everyone would want to do that*

- *If you want your child to have this disability adjustment, then you will need to pay for the whole class to have the same adjustment or otherwise it's not fair to the others*

- *We pay no attention to the reports of outside psychologists here so take them away and no we can't put them on your child's file. We consider only recommendations made by our school counsellor. But our counsellor has looked at your child's school reports and Decided that, since he is not failing, he is not worth testing especially since there are many more urgent cases demanding her time. Anyway our counsellor is not qualified to administer some of the tests required, as she is a teacher with a top-up qualification, but not a psychologist*

- *There are no disability adjustments for NAPLAN on the grounds of ADHD because it is not a recognised disability for purposes of NAPLAN*

- *Yes we understand that your child has been granted approval for a different timetable for his HSC trials on the grounds of disability but, even though all the other Year 12 students have been notified of their timetables 5 weeks in advance, your child will have to wait until one week before the trials start – but you could have a look at last year's timetable and that might give you a rough idea in the meantime*

- *Yes I'd like to help you but I applied to NESA last year for disability adjustments for a few of our students here, and frankly it was such a stressful and prolonged and acrimonious experience for me that emotionally I just don't feel up to doing it again this year, sorry…..*

- *Well yes we agree with your son's professional's report that he has an accurately measured reading speed which is very slow, but we won't apply to government for disability adjustments for him because we don't agree that he has a 'real' disability or disorder for purposes of the Standards – rather he has simply never been taught to read correctly*

  He has no word attack skills and he has been allowed to just memorise words by shape – but by Year 12 there are too many words to memorise that way. He can't 'see' the difference between words such as 'accoutrement' and 'accomplishment' and he needs remedial *teaching. But we are a high school and we don't teach students how to read here – they should already be doing that before they get here – they should have learned it in primary school and it's not our fault if they haven't. Pity though, as he's such a clever boy and he would have done well at uni. Have you thought of taking him out of Year 12 and enrolling him in an adult literacy program to teach him to read*

APPENDIX B

(relates to Part 6)

Examples of excuses proffered by teachers and school officials to justify a failure to properly implement previously approved disability adjustments for gifted students with disability

- *My child was told he could have his extra time for tests, but not if it would interfere with the teachers' lunch hour or breaks – in that case, he'd have to finish at the same time as everyone else*

- *My child was told that he could have the adjustments only if there happened to be enough spare rooms that day or only if someone could easily find a 'clean' computer with spellcheck, etc. already removed, or only if the volunteer scribe 'showed up' in time for the exam - otherwise my child would have to write the exam in the normal way.*

- *My child was told that his teacher could 'tell' that his 'disability was not affecting him today' so he didn't need his usual disability adjustments – the teacher said that disabilities come and go, and that his was not there today*

- *When I finally enquired about the non-honouring of the school's undertaking with respect to disability adjustments, I was told, "Well we tried that for a while and it didn't 'work'- so your child will have to just get along without it." or "Your child did not seem particularly receptive to the adjustment, so we gave it away. Sorry I should have told you, but I guess I forgot"*

- *I was told, "Well we offered your [adolescent] daughter the professionally recommended extra time for exams but she said that, unless she could also have a separate room, she didn't want extra time as it might make her stand out from the other students and they might wonder why she needed extra time, and then she might not get asked to the formal – and we can't find a separate room for her so she can't have extra time*

- *My child's teacher cannot identify the symptoms of a disability and instead tends to invariably attribute such symptoms to 'bad' behaviour and then demand that behaviour improve before the disability adjustments can be implemented - instead of the other way round*

- *My child's teacher suggested that instead of implementing my child's professionally recommended disability adjustments, the whole 'problem' could be solved by shipping my child off to some kind of 'behaviour-disordered' school*

- *The principal told me that her school would not provide the professionally recommended disability adjustments for my son with disability, but that she would be happy to have someone drive me round to visit all the other local schools so I could choose a new one and transfer my son there*

- *I was told that the school is under no obligation to notify me or any parent of the dates on which there will be in-school tests and exams [which meant that the parent could never remind the child in advance of what disability adjustments to expect, and had no way of checking whether the adjustments are indeed being implemented, or regularly implemented in any meaningful way. Some parents are reduced to asking their child every single afternoon whether there was an assessment that day and whether the adjustments were offered]*

- *My child was told that he has to ask for the adjustments for every single test – he has to remind the teachers what the adjustments are and why he needs them – sometimes within the hearing of other students. The teacher can't remember from one day to the next – why should a little child have to self-advocate and negotiate with teachers every day? And sometimes the teacher interrogates my child in the presence of others: eg "Surely you don't need your extra time today, do you? No one else is getting any*

- *My child was finally allowed extra time for NAPLAN (after I appealed and appealed) but the principal said that my child didn't really need it. During the NAPLAN test under separate supervision in a private room, a teacher tried to hurry my child along by telling him the answers. My child protested that he needed to figure out the answers on his own. He formed the view that the assistance was offered to make sure that he finished the test in the originally allotted time – to 'prove' that he really didn't need extra time after all*

- *My son was finally allowed separate supervision and rest breaks for NAPLAN but it turned out to be in the corner of the Deputy Principal's office and my son had to write his NAPLAN while she was constantly whispering into a phone. Plus the timing of the rest breaks was Decided solely by the Deputy Principal not by my child – how could she have known when he needed to go to the toilet?*

- *My child's teacher told me she had agreed to implement the disability adjustments solely because she had been instructed to by her principal, but she wanted me to know that she didn't agree with them and viewed them as 'cheating' and accordingly when she marked my child's assignments and tests which had been completed with the disability adjustments, she would never give my child a grade higher than a D, no matter what my child's work truly merited*

- *I was told that, although my child's professionals' reports had confirmed that my child's disability was permanent and would not 'clear up', still I had to pay for new and updated reports every year from each professional and, since I was trying to rely on last year's reports, the disability adjustments had been withdrawn, since perhaps by now the disability had 'gone away'*

- *My son was told by his math teacher that he could not continue to have the disability adjustments unless they were approved by the Head of Department (HOD) of Math. My son was told that he must take a copy of his ADHD report from his developmental paediatrician to the HOD and this he did. On arrival he was asked to wait until she was free to see him and this he also did – for approximately 25 minutes. He sat quietly in the waiting room and did absolutely nothing while he waited. At the end of 25 minutes, the HOD told him, without even glancing at the paediatrician's report, that he could not have disability adjustments on the grounds of ADHD because she had been watching him for 25 minutes and he had been sitting still and not even jiggling his legs, and in her view no child with true ADHD would ever be able to do that – accordingly he didn't have ADHD and did not need the disability adjustments.*

  [this example highlights the fact that even educators believe the media hype to the effect that ADHD is a behaviour or hyperactivity disorder, and that educators are generally not aware of the Predominantly Inattentive Presentation (PIP) type of ADHD in which the child is just inattentive but exhibits little or no hyperactivity, impulsivity, defiance or 'bad' behaviour. Interestingly, some educators still regularly equate ADHD and LD with 'bad' behaviour and according believe that quiet, polite, behaviourally compliant children could not possibly have LD or ADHD]

- *My Year 12 child was told that since he had dyslexia he would have to remember to ask for special help in every English class which required a writing task – and he must ask for it in front of all the other students – even though I had already spoken to the English teacher and had provided written strategies and recommendations for assistance in the classroom*

- *I was told that my Year 9 child would receive a scribe whenever possible but because of staffing constraints, students in higher years get priority, and adjustments can be guaranteed only for Years 11 and 12 – meaning that my child rarely had an opportunity to gain practice in dictating to a scribe.*

APPENDIX C

(relates to Part 7.1)

Examples of how gifted students with disability have been treated at school

Parents have reported that their child with disability has:

- *been 'voted out' of the class at the teacher's instigation by the other children because of issues stemming from the child's disability (eg, excessive impulsive blurting out of the [usually correct....] answers without putting up hand)*

- *been kept in at recess for weeks and weeks, and been told he will not be allowed out to play until he begins to write more neatly, when in the teacher's cupboard there are inches of occupational therapy reports recommending that he needs a keyboard because he can't handwrite, and he can't learn to*

- *had his mouth taped shut for talking too much and interrupting the class with too many questions (after the child has allegedly received repeated 'warnings')*

- *been forced to sit on a bench in PE while the other children have been instructed to throw tennis balls at the child until the (14-year-old) child cried*

- *been strapped to a chair with a belt as punishment for getting out of his seat and walking around (allegedly after being "warned")*

- *had pages ripped out of his workbook, and had homework and artwork ripped up in front of the class because his work was not 'neat' enough*

- *been punished in a particularly humiliating way in front of peers for doing the wrong homework (eg, child had done Exercise 8.7 instead of Exercise 7.8 because the child had an auditory processing disorder and had incorrectly recorded the orally-delivered homework in the diary)*

- *been mimicked and humiliated by a teacher in front of the class as a result of the child's inability to read aloud, and then when the child has begun to cry, the child has been told by the teacher not to be a 'cry-baby' and later been taunted and bullied in the playground by classmate witnesses*

- *been called 'rude' and/or 'lazy' in front of peers as a result of a symptom of the child's documented disability, when in fact the child is neither*

- *received school reports at the end of each semester just listing the symptoms of the child's disability and including a litany of all the child's shortcomings and recommending that the child must 'learn to' unilaterally correct what are in fact the symptoms of disability (eg, 'learn to' pay attention, sound out words, memorise timetables so they can be repeated quickly, write more neatly, etc)*

- *asked a teacher to read aloud a math question off the board as the child had dyslexia and felt that they could do the math if only they could* ***hear*** *the question, instead of being required to read it. The child reminded the teacher that they had dyslexia, but the teacher felt that the child was just being difficult, told the child that there was no such thing as dyslexia, and even if there were, it would not affect math. The child was then told to stand in the naughty corner for having been rude and difficult*

- *been told in front of the child's peers, "It's my job to teach and your job to learn. I've done my job and you haven't."*

- *been instructed to move some desks in a certain way and, when the child (who suffers from auditory processing disorder) asked for further clarification, the teacher said within the hearing of other pupils, "With your IQ surely you should be able to rearrange a bit of furniture."*

- *been repeatedly bullied by teachers because of his inability to learn to read, eg," You can't even sound out this simple word and yet your mother comes in here saying that you're 'gifted' - ha!"*

- *been told by teachers that she would never be awarded the HSC because of poor attendance, even though the student was enrolled in a 'Pathways' HSC program because of disabilities and medical conditions requiring frequent absences from school to attend medical appointments and recover from illnesses*

- *been isolated daily from other students and not allowed to interact from them on the grounds of behaviour stemming from the child's autism – resulting in school refusal, followed by a change of schools and ultimately PTSD which causes the child to be too frightened to attend even the new school*

- *been mocked and humiliated by the school receptionist after going to the school office to ask for his mother's phone number because his mobile phone was out of battery and he wanted to ring his* *mother on a friend's phone: "What are you in kindergarten that you can't even remember your own mother's mobile number". This was not the first time this receptionist had humiliated this student, who has disabilities and severe social anxiety. The student is now very anxious when going into the school office for any reason and will avoid the office if this woman is manning reception.*

- *had epilepsy seizures at school without the parent being informed, even though the parent had reported at the start of the school year that the child has epilepsy, is on medication and loses control of her bladder during seizures and needs help afterwards changing her underwear. Teacher's response was that the child had not complained of wet pants and parent's concerns were unfounded*
- *been told by his teacher that he was "poor at maths and needed to be placed in the lowest maths group" because he could not complete maths sheets in the allotted time and he could not remember his timestables when put under a time limit*

  The child, who suffered from dyslexia and was simply unable to ***read*** *the maths questions in the time allowed, was subsequently tested by the school counsellor and scored in the 99.5 percentile in a maths diagnostic test. That was the year that the child started referring to himself as 'stupid and dumb'.*

APPENDIX D

(relates to Part 7.2)

Examples of how parents of gifted students with disability have been treated by schools

Parents have reported that they:

- *have been told that only parents are allowed at school meetings and a parent may not bring along anyone else as a support person, advocate or note taker*

- *have been allowed to sit and weep throughout a 45-minute meeting with school officials, the parent on one side of a board table and 4 school representatives on the other, during which meeting the parent has been repeatedly harshly scolded for 'causing' her gifted child's disabilities, and been told that no one at the school is obliged to read the professional and medical reports or scholarly journal articles which she has brought in*

- *have been invited to go in to the school to meet with one named person and on arrival have been confronted with 7 people sitting across the table, all arguing against the existence of the professionally diagnosed disability and the implementation of disability adjustments*

- *have been made to feel exceedingly unwelcome at school meetings and have been called a 'nuisance' and been told that never before has the school had to spend so much time on one child, and that no other parents ever advocate for a child with disability, and it's just a waste of everyone's precious time, and therefore there will be no further meetings and in future the parent's emails and phone calls will not be answered.*

- *have attended school meetings which are held in public areas of the school within the hearing of people not involved in the meeting*

- *have had school officials 'laugh out loud' when a parent has requested professionally recommended and documented disability adjustments for a child who was not failing*

- *have been told that they must 'choose' whether they wanted their gifted child with disability 'registered' as gifted or as having a disability – one or the other, but not both – because the computer could not cope with the same child ticking both boxes simultaneously*

- *have been told by teachers, "I have an education degree and you don't. Leave your child's education to us – we know what we're doing here and you have no clue." Or "I had a lecture once on learning disabilities when I was at uni, and I'm here to tell you that your child doesn't have one. This specialist's report is rubbish."*

- *have had a school meeting electronically recorded without the knowledge of either the parents or the parents' advocate (not me in this instance). When this came to light later on, the parent was told simply, "Prove that you didn't approve of this recording in advance." Neither the parents nor the advocate had any memory of the subject of recording having ever been mentioned in the meeting*

- *have been told by a learning support teacher, "Well 10% of students have a disability and we have 900 students at this school so that's 90 students with disability, and I am the only learning support person here so realistically what do you expect me to do for your child – there are plenty here who are worse…."*

- *have been told that a teacher's aide has been assigned to support a child with disability in the classroom but, upon investigating, the parent has discovered that the aide has no training in disability (or in anything…) and is 'really just some kid's grandmother who comes in just to help out sometimes' and accordingly is often late or absent (with no replacement)*

- *have been told that if the parent alleges that the child has a disability and lodges professionals' reports in support of that allegation, then the child will have to leave the school [admittedly somewhat surprising in a State school when the child resides within the catchment area]*

- *have been loudly scolded in front of other adults at parent/teacher night and told, "Your daughter does not have a disability. She is just no good at Math. Most girls can't do Math, and your daughter is no exception. She should learn to be satisfied with a low mark". (The girl in question has a Quantitative Reasoning score on the Stanford-Binet 4 IQ test in the 99.57th percentile.)*

- *have been threatened in a rural community that if the parent proceeded to take action against the school for breach of the*

Standards, there would be financial consequences with respect to the parent's business, or social consequences with respect to the local townspeople, or emotional or grades-related consequences at school for the child with the disability

- *have been told that their child with autism would be allowed to attend school for only 2 hours per day – even though that meant that his single mother, who does not drive, had to take him to school on a train and then wait for the 2 hours near the school to take him home again, as the time permitted at school was not enough for the mother to return home and come back again by train*

APPENDIX E

(relates to Part 7.3)

Examples of excuses proffered by school officials and education departments to justify a refusal to implement professionally recommended disability adjustments for entrance tests for select-entry schools, programs or classes

- *Gifted children never require disability adjustments and if they do, then that means that they are not 'really gifted' and shouldn't be attempting the scholarship test or the selective school/class test in the first place*

- *This school has a blanket policy of no extra time for anyone, ever – except for blind applicants - regardless of your child's professionals' recommendations*

- *Despite your professionals' recommendations with respect to extra time, there will be none for your child. Students who are truly gifted never need extra time for tests – they just 'know' the answers. This is who we want for our selective schools and classes. All students would improve if given extra time – if they had more time to come up with the right answer*

- *We don't need any research to tell us that all gifted students are able to work quickly – we just* ***watch*** *them*

- *Parents who apply for disability adjustments for gifted children are trying to obtain an advantage for their child*

- *Students who have slow processing speeds could not be gifted, and even if we were to let them into a selective school or class, they wouldn't be able to compete there as we won't do anything to support them because selective schools and classes are designed for smart children who don't need this kind of support, and doing anything extra for your child might take the teachers' attention away from the other students*

- *If your child gets extra time on the entrance test and for in-school assessments, that fact will have to be reported on their results and they will be seen by the selection panel to have had an advantage over others [cf. this was found to be untrue when verified by phone with the relevant education department which confirmed that the fact that the child had received disability adjustments would* ***not*** *show on the results put before the selection panel]*

- *Yes your child may have qualified for an exemption from the writing component of the selective schools entrance test but we won't be exempting him from the writing components of his in-school assessments (ie, the other 50%) [this parent finally got this ruling changed for her child, but the relevant department of education said that they would not change this requirement for others in the future with writing exemptions]*

- *Just have your child write the selective schools test without adjustments, and then afterwards file an illness/misadventure claim form [which the parent did, but was then told that even with the disability adjustments, the child would not have scored well enough to be considered anyway and this was not worth pursuing – this case eventually went to conciliation at a State anti-discrimination board under State disability discrimination legislation and took up the time of many professionals (and my time….) over the course a whole morning*

APPENDIX F

(relates to Part 7.4)

Examples of excuses proffered by teachers and school officials to parents of gifted students with disability who are already enrolled in select-entry schools, programs or classes to justify a refusal to implement previously approved disability adjustments

- *This is a selective school/class and your child could not have passed our entrance test if he had had a disability. We would have picked it up. So he doesn't have one*

- *There are no children with a learning disability in this school – so the Standards do not apply to us here. Accordingly we will not even read these medical and psych reports recommending adjustments on the grounds of disability because disability could not exist*

- *We don't know how your child managed to get into this selective class but we can do nothing to support him here so take him out and return him to a mixed-ability setting and they will look after him there. If you leave him here unsupported, it might cause him stress and that would be your fault, not ours*

- *We understand that your daughter is unable to handwrite and that she needs all her worksheets delivered electronically rather than on paper, but none of our teachers knows how to convert worksheets into PDF documents so accordingly we can't do that here, and she will have to work in handwriting on paper photocopies the same way as everyone else [the girl thus had a small fraction as many notes as other students by the time of the exams – thus far less to review in preparation for them]*

- *I chose to teach here because I wanted to teach clever students. If I'd wanted to teach children with disability, I would have trained in special education, not Chemistry*

APPENDIX G

(relates to Part 2)

The following abbreviations are used throughout this submission:

ACARA Australian Curriculum, Assessment and Reporting Authority - defined in **Part 1**

AHRC Australian Human Rights Commission – defined in **Part 1**

AITSL Australian Institute for Teaching and School Leadership - defined in **Part 4.5**

Blueprint the *NSW Great Teaching, Inspired Learning: A Blueprint for Action* - defined in **Part 8.1**

DDA Disability Discrimination Act - defined in **Part 4.1**

GLD gifted learner with disability – defined in **Part 1**

Discussion Paper the Review's Discussion Paper - defined in **Part 1**

Legislation collectively, the DDA and the Standards - defined in **Parts 2 and 4.1**

NCCD Nationally Consistent Collection of Data **-** defined in **Part 4.2.4**

NESA NSW Education Standards Authority - defined in **Part 7.5.4**

QCAA Queensland Curriculum and Assessment Authority (formerly called the Queensland Studies Authority) – defined in **Part 4.2.4**

Review the 2020 Review of the Disability Standards for Education 2005 - defined in **Part 1**

Standards Disability Standards for Education - defined in **Part 4.1**

UDL Universal Design for Learning - defined in **Part 8.6**

UNSW University of New South Wales - defined in **Part 1**