



Commissioner for Children and Young People
Western Australia

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To Whom It May Concern

Review of the Disability Standards for Education 2005

*"Those with a disability are not limited, it just opens other doors of unimaginable abilities, talent and potential." (16 year old, *Speaking Out About Disability*)ⁱ*

As Commissioner for Children and Young People in Western Australia it is my role to advocate for the best interests of all children and young people under the age of 18 years in WA, to promote their meaningful participation within organisations and to monitor their wellbeing. In undertaking these functions I must give priority to Aboriginal and Torres Strait Islander children and young people and those who are vulnerable or disadvantaged for any reason.

As an independent, statutory officer I provide the following reflections of the Review of the Disability Standards for Education 2005 (the Standards). This submission is chiefly informed by the views of a diverse range of children and young people with disability in WA who have participated in consultations about their experiences at school, as well as feedback from schools and parents about the nature of support provided to students with disability.

The direct experiences of children and young people, parents and schools provide important insights into the extent to which the Standards are being applied, and areas of the Standards that could be strengthened to improve educational experiences for children with disability.

1. Rights of children and young people with disability, and the obligations and measures of compliance of educational providers

*"[To have a healthy and happy life, I need] acceptance, inclusion, to be seen as a person with potential and for help to reach that potential." 12 year-old, *Speaking Out About Disability*)ⁱⁱ*

Children and young people with disability emphasise that their disability is only one part of their life and they want to be seen as individuals with unique talents and needs.ⁱⁱⁱ Like all children and young people attending school, those with a disability

have the right to freely engage with learning in supportive and safe environments where they feel they belong and can achieve their full potential.

This is reinforced by the United Nations Convention on the Rights of the Child (UNCRC)^{iv} and the United Nations Convention on the Rights of Persons with Disability (UNCRPD),^v that require children with disability be treated with respect and dignity and have access to an education that provides them with equivalent opportunities as those without disability.

The Standards clearly define the legal requirements of the *Disability Discrimination Act 1992* (the DDA) in particular Section 31 which safeguards the rights of children and young people with disability, protects them from direct and indirect discrimination, and ensures equitable access to key areas of public life including education.^{vi} The Standards are formatted in a way that is useful and accessible, outlining the legal obligations of educational providers in areas such as enrolment, participation and student services.

However, there is scope for the Standards to go further in their requirements to ensure safety for children and young people with disability. The findings from the Royal Commission into Institutional Responses to Child Sexual Abuse^{vii} and emerging evidence provided to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability highlight a range of significant safety concerns for children and young people with disability in educational and institutional settings. Due to a range of factors, students with disability are more vulnerable to experiencing harm and all types of abuse. For this reason it is important that the Standards are clear on the obligations of educational providers to prevent harm to students with disability in school settings and to respond to concerns for student safety appropriately.

The Standards need to embed the National Principles for Child Safe Organisations, agreed to by the Council of Australian Governments in February 2019 and incorporate the Child Safe Standards set out by the Royal Commission into Institutional Responses to Child Sexual Abuse, which uphold equity for all children and young people, respects their diversity of needs and covers strategies to identify and manage risks that affect the safety and wellbeing of children and young people.

2. Knowledge, understanding, application and demonstration of the Standards

"I don't have more help. It's not easier. I don't like school. I don't get along with other kids there...I don't have an EA [Education Assistant] in my class. I want to have help but no one's listening to me." (9 year-old, Speaking Out About Autism)^{viii}

Whilst the Standards are clear in their guidance to schools, the experiences of children and young people with disability, families and education providers indicate that the imperative of the Standards at a school or individual student level is inconsistent.

In 2019, my Speaking Out Survey involved nearly 5,000 Year 4 to 12 students in main stream schools across Western Australia. In Years 7 – 12, 2,816 students completed the survey and of these 315 students reporting having a disability (11.4%). Findings revealed that compared to students without disability, students with disability reported an increased likelihood of:

- being suspended from school and a higher incidence of wagging and for longer periods
- having been bullied, including missing school because of a fear of bullying
- a lower perception of how well they do at school
- feeling like teachers didn't listen or care about them
- feeling that they were under-achieving at school.^{ix}

Whilst schools may have a genuine intention to provide the same level of education and appropriate adjustments for students with disability, their capacity to appropriately apply the Standards appears to be impacted by a range of issues. In a recent survey of school leaders conducted by my team, participants indicated that they felt constrained in the support that they provide for students with disability because of resourcing issues, a lack of specialist disability knowledge, limited support for staff, inadequate provision of services for schools and families, and often a lack of a formal supports or resources available for students with imputed disabilities.

"Huge pressure placed on the school around curriculum and what a schools' core business is. Societal issues impact on this school in such a way that no staff member can address all areas required despite them feeling that they must." (Metropolitan primary school)^x

"Lack of support for students with learning difficulties that are difficult to identify / diagnose and do not fit into the prescribed categories which attract support." (Metropolitan primary school)^{xi}

Students with disability, family members and school leaders have identified a range of factors which are important for supporting students with disability at school, including: caring and capable staff; students feeling included and listened to; mental health and wellbeing support; having good friends; and feeling safe and a sense of belonging.

Standards for making reasonable adjustments

"I want the teacher, or whoever to listen more." (14 year old, *Speaking Out About Autism*)

The Standards state that students with disability, or an associate of the student, must be consulted in the ongoing development of reasonable adjustments. Meaningful consultation with these children and young people is required to hear their concerns and insights into the complex challenges they face and to ensure they receive the required supports. However, children and young people with disability may face unique challenges that can limit self-advocacy and opportunities to participate and be heard.

The Standards should be strengthened to uphold the rights of students with disability to be consulted and heard in decisions being made about their education. This should include that all efforts are made to consult with the student first and foremost, and only where this is not possible, to consult with an associate; that consultation methods are appropriate to the needs of the student; and that decision making appropriately considers and gives weight to their views and opinions.

Providing extra support by capable and skilled teachers at school is especially important for students with disability. However, in my Speaking Out Survey in 2019, a higher percentage (18.6%) of students with disability indicated that they almost never

got help when they needed it compared to 13.8 per cent of students without disability.^{xii}

In my survey with school leaders, schools identified that staff needed specialised training to appropriately support students with disability, and that restricted access to specialised staff within schools compounded wellbeing issues for students with complex needs.

"Limited training and expertise for school staff." (Metropolitan secondary school, *Student wellbeing in schools project*)^{xiii}

Targeted professional learning can be an effective strategy to build staff capacity and improve the educational experience of students with disability.^{xiv} Equally important is strong school leadership ensuring teachers use best practice strategies and skills to effectively differentiate the curriculum and to employ a collaborative process of consultation, implementation and evaluation with every student with disabilities.

"[What's working well are]...committed and professional staff that go the extra mile to provide a supportive and inclusive school and classroom environment. Investing the time in building relationships - getting to know each child as an individual and what their strengths and weaknesses are." (Metropolitan government school, *Student wellbeing in schools project*)^{xv}

Standards for Enrolment and Participation

"I am important. Ask me what I think, I want more choices, I have good ideas, sometimes I need help...I am the same as other kids, I want to do the same activities, I am clever." (9 year-old, *Speaking Out About Disability*)^{xvi}

The Western Australian Curriculum provides a flexible and comprehensive framework for teachers to ensure comparable learning opportunities to meet the needs of students 'on the same basis'. Under the DDA, a school is not permitted to discriminate on the grounds of disability by denying or limiting a student's access to any benefit provided by the school unless the school can prove 'unjustifiable hardship'.

It is clear that not all students with disability have the same access to education as other students. Some parents have raised concerns with me about the treatment of their child at school. Examples include: a primary school child with disability who had been told not to return to school because the school was, "not equipped to deal with him", and who was not offered alternative education options; without consultation, school leadership revoking reasonable adjustments that had previously been provided to a child; the use of isolation and seclusion of a child with imputed disability without any parental involvement in behavioural management planning; a lack of adequate support and recognition of mental health as a disability in schools. These examples all raise deep concerns about how the Standards for enrolment and participation are being applied and actioned at an individual school level.

Standards for student support services

Children and young people's experiences with learning and the level of autonomy they are given are critical determinants of their lifetime wellbeing. It is every child's right to be engaged and supported with learning from an early age, to transition to and from school successfully, to feel prepared for, and feel positive about their future and to have an active voice and be listened to.

School leaders in my survey reported feeling under-resourced and ill-equipped to meet the wellbeing needs of their general student population, and further stretched to meet the high level of care and support needed for students with disability. Participants pointed to limited school capacity to meet wellbeing needs, long delays in accessing funding or services, challenges with the National Disability Insurance Scheme (NDIS) and limited financial capacity to access services for both schools and families.^{xvii}

"...the more severe [the disability] the more difficult to get the resources required to assist. Often the School Psych is here for limited timing and with more and more students presenting with either a disability (undiagnosed) or mental health problems - it is difficult to manage." (Regional government public and secondary school, *Student wellbeing in schools project*)^{xviii}

Limited access to specialised mental health care for students with disability was also commonly identified by schools.

"Some serious and diagnosed – e.g. bipolar, PTSD and ASD; and others undiagnosed. We find that it is mostly these [undiagnosed and unsupported] issues, especially e.g. ASD and ADHD that leads to poor social skills, poor reading of social cues, and hence relational conflict and bullying issues." (Metropolitan Catholic CaRE school, *Student wellbeing in schools project*)^{xix}

Standards for harassment and victimisation

While the Standards cover harassment and victimisation, it is clear that children and young people with disability also experience the harmful effects of social isolation, bullying and exclusion at school as a result of their disability.

"I'm not really included. Sometimes I feel really lonely. Some of the students don't act like they even know I'm there...And even if the students could understand more about autism, it would help a lot." (14 year-old, *Speaking Out About Autism*)^{xx}

"I play by myself because it's too hard to play with other people." (9 year-old, *Speaking Out About Autism*)^{xxi}

Under the Standards, schools are obligated to develop and implement strategies and programs to prevent harassment or victimisation of students with disability. Despite this, research shows that students with disability feel unsafe and experience higher rates of bullying at school.^{xxii}

Social exclusion and not feeling a sense of belonging at school can also be an issue, with students with disability being less likely to have supportive relationships with friends compared to other students; and more likely to report that they hardly or never got along with their classmates.^{xxiii}

There is an opportunity for the Standards to be expanded and strengthened so that they not only include the prevention of harassment and victimisation of students with a disability, but also promote social inclusion, a sense of belonging and strengthened social connections for these students.

A sense of safety, belonging and connection at school for students with disability can be nurtured with positive relationships with friends and teachers in learning environments that foster a culture of acceptance.^{xxiv}

3. Level of equitable access for students with disability in education and training

*"Us kids with disabilities are strong. I'm a 14 year-old girl with dreams and hopes like any other 14 year-old except I was wired a different way. It doesn't make me any less of a person. I'm just different, but aren't we all unique?" (14 year-old, *Speaking Out About Disability*),^{xxv}*

More research is needed to fill the gap of understanding about disability in education and to more fully determine the extent to which the Standards are being met and what needs to be improved to meet their needs.

Children and young people with disability have told me that they want to be seen as more than their disability and need more opportunities to participate in their education; to be listened to, encouraged to develop their talents, build relationships, and to belong. It is vital that all children and young people with disabilities have equal access to appropriate resources to engage in early education and lifelong learning and have ongoing opportunities to express their views and actively participate in making decisions to improve their own educational experiences.

Despite the requirements outlined in the Standards, it is clear from the experiences of students, families and school leaders, that many students with disability continue to feel unsafe and out of place at school, are not receiving access to educational opportunities on the same basis as students without disabilities, and are thus missing out on the essential support and adjustments they are entitled to.

It is also evident that more could be done to ensure that whole school communities are aware of the rights of students with disability and that the Standards are fully understood by students and their families, and compliance is demonstrated by educators.

Aboriginal children and young people with disability

It is well known that Aboriginal children and young people with disability may have lower educational and employment outcomes compared to their peers without disability, due to vulnerability factors such as limited disability awareness amongst Aboriginal communities, poor access to primary health care, intergenerational trauma and poverty.^{xxvi}

Further compounding disadvantage, Aboriginal children and young people are more likely to be misdiagnosed or under-diagnosed for disability conditions.^{xxvii} Aboriginal families have raised concerns about the time-consuming and costly process of diagnosing disability and worry about their children's inability to access appropriate disability support at school, fearing they, "might end up in out-of-home care or, eventually, in the criminal justice system."^{xxviii xxix xxx}

Aboriginal students with imputed disability may be excluded from accessing the support needed to engage in the curriculum and may be excluded from education altogether if behaviours attributed to disability are misinterpreted as 'bad'.^{xxxi} Especially in regional and remote areas, Aboriginal children with disabilities and their families need understanding and specialist disability support from non-Aboriginal educators who are consistently trained in appropriate cultural awareness.^{xxxii}

Despite Australian Bureau of Statistics (ABS) figures showing higher rates of disability amongst Aboriginal children people compared to non-Aboriginal children, there are

gaps in available data, and limited understanding into service availability and the effectiveness of support services for Aboriginal people.^{xxxiii} Without sufficient research reflecting the specific experiences of Aboriginal children and young people with disability, the challenge of providing adequate educational supports to ensure they receive equitable access to quality education is even greater.^{xxxiv}

The Standards should be further strengthened to address the specific needs and experiences of Aboriginal children and young people with disability, and include a need for education institutions to provide culturally appropriate responses, support and adjustments.

Summary

It is important that education providers understand and promote the rights of students with disabilities and create valuable opportunities to collaborate with students, their family and other experts in their education journey. Listening to the views of students with disability indicates that there is more to be done to improve the educational experiences of students with disability, and the Review of these Standards presents an important opportunity to achieve this.

I appreciate the opportunity to provide this submission and would be pleased to provide further comment as required.

Yours sincerely



COLIN PETTIT

Commissioner for Children and Young People WA

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ⁱ Commissioner for Children and Young People WA 2013, *Speaking Out About Disability*, Commissioner for Children and Young People WA.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} United Nations Convention on the Rights of the Child, available at <https://www.unicef.org/child-rights-convention>;

^v United Nations Convention on the Rights of Persons with Disabilities, available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

^{vi} *Disability Discrimination Act 1992*, available at <https://www.legislation.gov.au/Details/C2018C00125>

^{vii} Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, available at <https://www.childabuseroyalcommission.gov.au/recommendations>

^{viii} Commissioner for Children and Young People WA 2020, *Speaking Out about Autism*, Commissioner for Children and Young People WA, Perth.

^{ix} Commissioner for Children and Young People WA 2020, *Speaking Out Survey 2019. The views of WA children and young people on their wellbeing – a summary report*, Commissioner for Children and Young People WA, Perth.

^x Commissioner for Children and Young People WA 2020, *School survey findings on student wellbeing*, Commissioner for Children and Young People WA, Perth.

^{xi} Ibid.

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- xii Commissioner for Children and Young People WA 2020, *Speaking Out Survey 2019. The views of WA children and young people on their wellbeing – a summary report*, Commissioner for Children and Young People WA, Perth.
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- xxvi Commissioner for Children and Young People WA 2015, *Submission to the Inquiry into current levels of access and attainment for students with disability, and the impact on students and families associated with inadequate levels of support*, Submission to the Senate Education and Employment Committee, Commonwealth of Australia.
- xxvii Lilley R et al 2019, *We Look After Our Own Mob – Aboriginal and Torres Strait Islander Experiences of Autism*, Macquarie University, Sydney.
- xxviii Ibid.
- xxix Bower C et al 2018, "Fetal alcohol spectrum disorder and youth justice: a prevalence study amount young people sentenced to detention in Western Australia", *BMJ Open*, Vol 8, No 2.
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- xxxiv Ibid.