



## **Australian Education Union**

### **Submission to the**

## **Review of Disability Standards for Education 2005**

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## Review of Disability Standards for Education 2005

### *Questions for providers of education and training*

In order to provide context for your comments please indicate whether you are from:

- School
- VET
- University
- Private training provider
- Peak/community organisation - **Australian Education Union**
- Other

You may answer all or some of the questions.

### ***Preamble:***

The Australian Education Union represents approximately 184,000 teachers and other education workers in the primary, secondary, early childhood and TAFE sectors throughout Australia. Meeting the education and training needs of children and students with disabilities/special needs in these sectors is a high priority of our organisation and our members.

Compliance with the *Disability Discrimination Act 1992 [DDA]* requires that students with disabilities have a right to access and participate in education on the same basis as those without disabilities in order to improve the educational outcomes for students with disabilities.

If the Review of Disability Standards is to support the achievement of this major Government priority it must take account of:

- the increasing proportion of children and students with identified disabilities relative to the overall student population;
- a growing number of students with increasingly complex disabilities;
- a considerable level of unmet need; and
- the lower levels of educational attainment amongst people with disabilities in schooling, VET and universities.

### ***Question 1 Providing clarity***

- *Are the Standards easy to understand or are there parts that require clarification?*
- *Is the format of the Standards useful for understanding rights and requirements under each of the Standards?*

- *Are the terms used in the Standards clear to users and providers?*
- *Are there any parts of the Standards that need additional explanation or details of where to find additional information?*

The Standards are clear and the ‘plain English’ Guidance notes provide additional material to support interpretation by education providers and students.

The ‘Overview of Rights and Requirements under the Standards’ and the specific examples provided in the Review Discussion paper are a useful resource which could be more widely circulated.

### ***Question 2 Obligations under the Standards***

*Are you aware of the requirements of education providers to enable students with disability to access and participate in education and training on the same basis as students without disability?*

- *Are you aware that these requirements form part of the Standards?*
- *How have the Standards assisted you in understanding the requirements of providers under the DDA?*
- *Where did you find out about the Standards and where would you access additional information?*
- *Are the Standards easy to understand or are there parts that require clarification?*
- *Are the measures of compliance contained in each of the parts of the Standards reasonable and helpful in understanding the requirements of providers? Have they been effective?*
- *In what ways have you demonstrated compliance with the Standards?*

The lack of congruence between various jurisdictions in regard to identifying and funding students with disabilities is a major concern. It is an issue which has been identified as a national priority for many years, and seems to be at odds with the Federal Government’s introduction of the Standards in 2005 as part of a national commitment to overcoming discrimination against people with a disability by (a) clarifying their rights to equal access and participation in education and training and (b) the obligations of education providers.

Significant inconsistencies in school funding policies and financial arrangements between the States/Territories have led to variations in access and quality of education for students with disabilities. Differing eligibility criteria make it very difficult for parents/carers when they move between states and find that the special educational needs of their child which had been recognised and attracted funding in one jurisdiction are not recognised in another.

The development of a national agreement on the definition of disability is urgently needed to ensure all identifiable cohorts of students are fully included and overcome differing interpretations of target groups and levels of provision, which is at odds with the obligations in the Standards.

The Ministers' Foreword to the *Disability Standards for Education 2005* notes that the Federal Government will contribute to the development of professional development materials for education institutions to support the implementation of the Standards.

However from the information provided by our members it is clear that there was insufficient professional development. In the schooling sector, many educators, both school and non-school based, including managers and staff in State, Regional and District Offices, are unaware of the Standards and their practical implications.

Levels of awareness and/or specific knowledge of the Standards, and the rights and obligations contained in them, vary considerably. There is an urgent need for training/professional development for all educators in all areas, including refresher courses with updated information available on a regular basis for all employees. This would assist in ensuring that information from the Standards is incorporated into system and site planning and training priorities.

As there is a clear and direct relationship between the capacity of an educational setting to include particular students and the level of resources provided, it would be useful if the Standards clarified where the responsibility for meeting the level of resources required lies between sites and Departments.

The AEU's concern is that while the outline of the obligations of education providers under the *DDA* and the rights of students/carers are clearly specified, the obligation of authorities to ensure that resourcing is adequate to enable providers to meet those rights is not specified.

The Standards lack a strategic properly resourced plan for their implementation. There is a widespread view across the AEU membership that Federal and State/Territory governments and their education systems are not fulfilling their obligations to provide adequate resourcing to enable schools and other education providers to effectively comply with the standards and meet their obligations.

This obligation should be made explicit in the Standards.

There is clear evidence of under-funding and resourcing of programs, including capital costs of compliance with legislative changes associated with the *DDA*, aimed at ensuring access and participation to students with disabilities education on the same basis as those without disabilities, and improving their educational outcomes.

The increasing inclusion of students with disabilities in mainstream settings since the *DDA* has generated a demand for facilities, staff and expertise which is not being met, and there is a widespread shortage of appropriately qualified educators and support staff.

There is an unrealistic expectation that with inclusion policies now broadly accepted, classroom teachers and other educators will develop skills in areas that were once the domain of specialists, without sufficient regard to the specialised skills, knowledge and experience required.

In schools, inclusive education policies and the increasing numbers of students with disabilities, mean that most teachers in mainstream schools now teach students with

disabilities. Teacher training has not usually prepared 'mainstream teachers' for dealing with the complexities associated with special needs and mental health problems, with only approximately 10% of teachers having received training in teaching methodologies for students with disabilities or learning difficulties.

Many are not well prepared for this experience and unskilled in methods which involve teaching across a wide spectrum of abilities, capabilities and disabilities and dealing with the classroom dynamics that are affected by the presence of students with different disabilities. Neither current pre-service education nor in-service training/professional development provides this expertise.

While the obligations outlined in the Standards are clear, it is difficult, if not impossible, to see how they can be achieved when many teachers are teaching classes of up to 30 (in some cases more) students while also dealing with students with disabilities and mental health problems (which are frequently combined with learning difficulties or intellectual disability). The provision of some supplementary funding for a few hours of support barely begins to address the real problems facing schools, teachers and students.

Special schools also face challenges in obtaining sufficiently qualified staff due to the scarcity of trained personnel and the increasing complexity of the needs of their students.

In order to cope with the diversity of students in their schools, and endeavouring to provide quality education opportunities for all enrolled students, schools face the dilemma of how to balance the need to provide extra support for children with special needs through the school's budget and the money available for other students and programs. They do their best to meet the costs of providing for all students but demand frequently exceeds their resources and often necessitates a priority list and decisions about which are the highest needs.

For sites to meet the obligations as specified in the Standards they require educators with appropriate pre-service and in-service training in disabilities/special needs, appropriately trained support staff, and leaders/managers with the knowledge, skills and expertise required to meet the needs of students with disabilities. Induction and mentoring are vital, in addition to training, to support the applications of the Standards.

Governments must provide their systems with the capacity to deliver a full continuum of education services, including both specialist and mainstream settings in preschools and schools, in order to ensure that students/parents/carers can make appropriate choices at all stages of their education.

Fully meeting this capacity must also recognise the funding and resourcing implications of the compounding of the effects of disability with other factors known to be indicative of poorer participation and outcomes, such as low SES, geographical location, Indigeneity, and NESB.

### ***Question 3 Access to education and training opportunities***

*Since the introduction of the Standards have any new processes relating to enrolment, participation and support services been introduced to ensure students with disability access education and training opportunities on the same basis as those without disability?*

- *Has the participation of students with disability changed at your institution following the introduction of the Standards in 2005? If so, in what way have the Standards contributed to the change?*
- *Has the process specified in the Standards assisted you to meet your requirements; particularly the provisions relating to reasonable adjustment and unjustifiable hardship?*

In the schooling sector, the *DDA* and the Standards have contributed to changing enrolment patterns which show significant increases in the number of students with disabilities previously educated in special schools and classes now in mainstream classes.

While different states use different criteria for identifying school students with disabilities, currently 4.6% of students are identified as having a disability. The numbers of funded school students with disabilities has increased by more than 20% in the four years from 2005 to 2009. 89% of students with disabilities aged 5-14 years attend mainstream schools (73% in mainstream classes and 27% in special classes) and 9% attend special schools. In addition, the definition of disability contained in the Act includes students with learning difficulties, estimated to be 10-15% of the student population.

In the early childhood sector participation in pre-school varies considerably across the states/territories. In 2010, nationally 6.1% of children with a disability aged 3-5 years were enrolled in preschool, compared to 8% of children aged 3-5 years in the community with a disability.

In the VET sector there are considerable variations between jurisdictions in the support facilities and services which are provided to publicly funded VET students with disabilities, and significant differences in access to VET. Nationally 6.9% of publicly funded VET students in 2009 reported having a disability, compared to an estimated 16.8% of all 15-46 year olds in the population.

While the number of VET students identifying as having a disability has increased from 96,900 to 100,900 between 2005 and 2010, VET students with a disability remain amongst those most likely to miss out on vocational education and training. 52.8% of graduates with a disability were employed in 2009 after completing a publicly funded VET course in 2008. This compares to 76.2% of all VET graduates, 63.6% from a NESB background, 81.1% from remote and very remote areas, and 66.4% of Indigenous graduates.

While there has been progress across the sectors in understanding the support needs of children and students with disabilities and the costs of providing these supports, the practical effectiveness of the Standards depends on the knowledge and practices in specific sites, which is often limited by lack of resources and inadequate staffing.

69% of public school principals responding to the 2010 AEU *State of Our Schools Survey* reported that they did not have sufficient teaching resources to appropriately meet the needs of special education and students with disabilities in their schools. 88% indicated that they lacked sufficient assistance for teachers in the classroom, 50% that they lacked trained teachers, 52% that they lacked dedicated programs, and 50% that they lacked appropriate equipment and learning spaces. Lack of funding limits access in terms of excursions and the

like, and it is often difficult to secure staff, in particular short-term support staff, with the necessary skills and knowledge, particularly in remote areas.

There is also a need for greater attention to what can often be difficult and confusing transitions from preschool to primary school; primary school to secondary school; and secondary school to post-school options, including the VET sector.

Access to transport to the most appropriate setting is also a problem in some cases and is not limited to remote areas. In the NT, in particular, remoteness from appropriate facilities combines with a lack of transport to make access for a number of students, the majority of whom are Indigenous, extremely problematic.

Where the needs of students are such that they require an alternative setting to a mainstream school, the obligation is on systems to meet this need and not attempt to impose the 'inclusion option' in order to cut costs.

While the Standards outline the terms 'unjustifiable hardship' and 'reasonable adjustments' clearly, there are often difficulties in the 'real world' as to exactly what constitutes 'unjustifiable' and 'unreasonable'. Problems associated with the disjuncture between expectations of what can be rightfully expected and what under-resourced educational institutions can provide, are exacerbated by the fact that the great majority of educational institutions have students with disabilities enrolled.

#### ***Question 4 Eliminating discrimination***

*Has your institution taken any specific action to reduce the possibility of discrimination relating to students with disability following the introduction of the Standards in 2005? If so, what actions?*

- *For example does your institution have grievance procedures in place for students who wish to lodge a complaint relating to discrimination, harassment or victimisation? Are the grievance procedures publicly available?*
- *Has your institution received complaints relating to the discrimination, harassment or victimisation of students with disability? If so, please describe.*
- *Has the number or nature of complaints changed since the introduction of the Standards?*

While educators strive to provide the programs, support and facilities to ensure that there is no discrimination against students with disabilities in terms of access, participation, and outcomes, it is difficult in the context of current funding and resourcing practices. They face the challenge of meeting both the particular needs of students with disabilities as outlined in the Standards, and the needs of all their students.

Grievance procedures can only have limited effect if they are not accompanied by the necessary information and support to allow sites to resolve grievances in accordance with the Standards.

There are also concerns that some parents/carers believe they have an automatic right to enrol their child at a particular public school in a particular setting. If they do not receive the

placement they want, some may then claim discrimination. A particular example is where parents insist their child with autism is enrolled in a mainstream class in a primary school when the school has an Autism Unit attached, and the professional opinion of the principal and teachers is that child would receive a more appropriate educational program and have subsequent opportunities for integration in a mainstream setting if they attended the Autism Unit.

Problems can also arise for our members when students with disabilities exhibit violent behaviours. Even though a student may be temporarily excluded because their behaviour, rather than their disability as such, poses psychological or physical harm, parents can sometimes accuse a school of discrimination.

### ***Question 5 Recognition and acceptance***

*Do you think the Standards have raised awareness and increased understanding of the issues affecting people with disability and their rights to access and participate in education and training?*

- *If so, can you provide examples?*
- *Are there issues that require more information or clarification so that there is greater awareness of the issues affecting people with disability in relation to education and training?*

The introduction of the Standards has helped to improve understanding and access and outcomes for students with disabilities.

However, as we have outlined, the current level of implementation varies according to the site context, the student cohort, levels of knowledge and availability of resources at the site.

All systems recognise that curriculum and assessment practices must be made more inclusive in order to cater for all students and meet their complex learning needs, including students with disabilities/special needs. However the challenge of developing curriculum and assessment practices broad enough to meet the needs of all students and providing the professional development and expertise for education professionals to implement them across systems is formidable.

The Standards should stipulate that education providers such as the relevant State/Territory authorities provide mandatory professional development for all employees to ensure that they are familiar with the Standards and the relevant compliance and implementation measures which achieving the Standards requires.

Expert leadership, additional resources and designated leadership positions are needed to make the Standards achievable, in addition to significantly expanded and upgraded training for all staff, with the Standards reflected in job and person specifications and performance development processes.

### ***Question 6 Compatibility with current education system***

*Have there been any changes in education and training practice (including admission, enrolment, participation and curriculum delivery) that are not covered or compatible with the provisions in the Standards?*

- *Are there any issues about access, participation and educational provision not addressed in the current Standards that might be considered in the future?*
- *Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?*

Meaningful implementation of the Standards would see inclusive outcomes for all students across the full range of education settings. However a number of mandated or about to be implemented changes in school education are incompatible/potentially incompatible with the Standards.

As with previous curriculum development where the needs of students with disabilities are considered after it has been developed, the Australian Curriculum being developed has failed so far in addressing curriculum for students with special needs. To be fully compliant with the Standards, the curriculum needs of students with disabilities should be built into the curriculum from the beginning of the process.

While all students are encouraged to participate in NAPLAN and provisions are expected to be made for individual students with special needs, many students with significant disabilities are not able to participate in the testing program. As a consequence there is a concern that this may limit students' access to targeted school support whilst targeted funding through National Partnership funding arrangements is underpinned by testing outcomes.

The more 'high stakes' the results of the NAPLAN tests become, at a time when we are experiencing a relentless focus on comparing student, teacher and school academic performance based on test results, the greater the potential for discrimination against students with disabilities and their teachers in both mainstream and specialist settings becomes.

It is not difficult to see how the proposed introduction of 'performance' bonuses for schools and teachers based on student results could act as a disincentive to inclusive educational practices for students with disabilities/special needs. Rather than leading to improved educational outcomes for this cohort of students it could well have the opposite effect.

The Federal Government's proposed 'Empowering Local Schools' reform also has potential implications for students with disabilities/special needs. The Government says it will drive improvements in student achievement and enable schools to better meet the needs of students by enhancing parental and community ownership of school decision making, thus making them more autonomous and accountable for student performance. Just how this focus on local accountability for academic performance will accommodate the needs of students with disabilities/special needs is unclear.

International research shows that devolving greater powers over the management of existing resources has not significantly changed the quantum of resources available to sites, and there is little evidence of improvements in student achievement across the whole student population, let alone the students with disabilities specifically.

Among other things it raises the question of whether the enrolment of all students with disabilities/special needs is best dealt with at the individual institution level. Ensuring the most appropriate placement for a student in the context of all the factors which need to be considered, such as the capacity of the school to meet their needs, the wishes of their parents, and the needs of other students, can be a complex process. Making the right decision may well need to be undertaken in a broader context than that of the individual school.

It is also the case that reform agendas such as ‘Empowering Local Schools’ are frequently accompanied by moves towards cost-cutting. Recent revelations in NSW of a secret blueprint to slash education staff and funding by devolving responsibilities to schools and cutting central support staff numbers highlights how rhetoric about ‘greater school autonomy to improve educational outcomes’ has been used to disguise that it is part of a cost-cutting strategy.

Similarly, the School Learning Support Program currently being trialled is said to be about providing more immediate special-needs support for students and their class teachers by allocating resources directly to each school. However it is linked to a Treasury/DET report in collaboration with the Boston Consulting Group aimed at dealing with the resourcing consequences of the growing number of students with disabilities. According to the report, the funding model for integrating special needs students, would “promote sustainability by shifting [the] fast-growing segment into [a] fixed-cost program [which] may avoid up to \$100-120 million over five years”.

As part of the trial, specialist teachers who formerly taught students with one specific disability across a number of schools, are fixed to one school and required to deal with the full range of disabilities – physical and intellectual disabilities, autism, language and communication disorders, learning difficulties including dyslexia, etc - in that school, after undertaking a 110-hour online training package.

Under the new special needs funding model, schools which had more students with disabilities enrolled than contained in the funding allocation ratio based on a community average, would lose funding if the new system being trialled is implemented.

Meeting the rights and needs of students with disabilities/special needs requires both professional autonomy and authority at the local level, *and* a framework of system policies, programs tailored to meet local circumstances and needs, educational support services and targeted resources which are beyond the reach of individual schools.

### ***Other comments***

***Is there anything else you would like to tell us about the Standards? For example are there any gaps that need to be addressed?***

Matters related to the education of students with disabilities and special needs are regularly raised within the union’s forums. Our members strive to provide the best education for all their students but the frequency and extent of dissatisfaction and stress reflects widespread

problems associated with the way in which the education of students with disabilities is currently resourced and managed.

The rate of integration since the DDA has put considerable stress on systems and sites, and current processes impose unreasonable burdens on the workload of our members and their capacity to make adequate provision for all students.

Our members struggle to provide suitable and adequate education for students with disabilities/special needs, while at the same time not compromising the learning opportunities for all students. They simply do not have the resources to meet the needs of all their students.

Additional funding for more teachers and appropriate support staff, such as integration aides, therapists, speech pathologists, occupational therapists, physiotherapists and nurses, to support individual students and teachers, as well as specialised equipment, modifications to teaching spaces and greater access for disabled students, is necessary to provide them with equitable education as required by the Standards.

In order to achieve the Standards, all legislation and government policies should guarantee:

- the provision of appropriate programs and resources for students with a range of special needs with curriculum and assessment practices specifically designed to ensure genuine inclusion of students with disabilities/special needs and appropriate outcomes.
- maintenance of a full range of education services for students with disabilities – from inclusion in mainstream classes, support classes or special preschools and schools, and in the VET sector.
- adequate pre- and in-service training in disability/special needs for all staff, with the provision of an additional tier of expertise through specialist teachers with appropriate qualifications, skills and experience.
- an integrated approach to supporting students with disabilities by the multiple agencies involved.
- the professional integrity of the teaching profession, as the major provider of education programs to all students, in consultation with parents/carers and students as appropriate.
- the educational and general welfare of all students, appropriate processes of consultation with parents, students and education workers, and upholding the rights of all parties within reasonable parameters.
- the industrial rights of education workers, particularly in relation to their workloads and working conditions.