

Feedback on Department for Education draft Disability Access and Inclusion Plan (DAIP)

October 2020



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Background and summary of recommendations

A good education is key to lifelong physical and mental health and wellbeing, social inclusion, employment prospects and economic security. Education is not only a fundamental human right in itself, but it is also a means of realising other human rights, making inclusive and fair societies and supporting the development of active and informed young citizens.

Since becoming South Australia's Commissioner for Children and Young People in 2017, children and young people have consistently raised their concerns about who is being excluded from school and the kind of support that is available to keep students engaged in education. Consequently, one of the top five priorities for my work is "to help everyone get an education".

Students in inclusive settings have told me about the benefits of greater inclusion, including a strengthened sense of belonging and self-worth, positive relationships, better learning experiences and higher levels of educational engagement and attainment:

"Your less defined by a certain trait and more by yourself and who you are. I can talk to teacher like an adult. Students collaborate."

"One on one teaching. Receive support from teachers. Teachers know your learning and how each child learns best. Teachers modify learning for children who struggle with their learning. Mental health support, academic support."

The benefits of inclusive education outweigh the significant emotional and financial costs to individuals and communities of failing to provide understanding and timely support, and failing to prepare them to participate and contribute to society.

The rights of all children with disability to access and participate in education on the same basis as students without disability are enshrined in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention on the Rights of Persons with Disability (UNCRPD). They are also protected in the *Disability Discrimination Act 1992 (Cth)* and the associated Disability Standards for Education 2005 (the Standards).

Despite these legislative protections, it is of great concern that access and participation in education and employment remains one of the most significant challenges facing students with disability and their families in Australia.

Children and young people with disability, families, carers and other stakeholders in the disability and education sectors have raised the following systemic concerns with my office:

- "Gatekeeping" practices that restrict and discourage the enrolment of students with disability at school;
- Informal and formal suspensions and exclusions from school, which disproportionately impact children with disability from a very young age, restrict their learning, social development and physical activity inside and outside of the classroom and often exacerbate existing challenges rather than reduce "problem behaviour";

- A culture of low expectations for students with disability, which leads to a failure to take their educational needs and future aspirations of students with disability seriously, including their career and employment prospects;
- A concerning use of restrictive practices, including restraint, isolation and seclusion against students with disability;
- A lack of training and inadequate resources for teachers to identify and understand disability-related needs;
- A lack of reasonable adjustments being made despite the obligation under the Standards to make such reasonable adjustments;
- A lack of consultation between education providers and students and families about potential support and adjustments to support the learning and participation of students with disability; and
- Inaccessible, opaque and time-consuming complaints processes that place the onus on students and their families to highlight discrimination rather than on the system to show non-discrimination.

All children have the right to access and participate in education no matter which school they attend. Where the system is unable or unwilling to meet the needs of all children, it is the system, not the child that needs to change.

Thank you for the opportunity to provide feedback on the Department for Education's draft Disability Access and Inclusion Plan (DAIP). My office makes the following recommendations to guide the final DAIP's implementation and ensure that state authorities and education providers fulfil their legal obligations to provide all children and young people with the best possible education:

- 1. That the students with disability transport assistance program procedure is reviewed as soon as possible to ensure that all decision-making about travelling allowances for students with disability:**
 - a. Does not result in indirect discrimination under state and Commonwealth discrimination legislation;**
 - b. Is transparent;**
 - c. Is made in the best interests of the child, no matter where they live.**
- 2. That the final DAIP outlines how young people with disability will be supported to actively participate in decision-making that includes but is not confined to personalised learning plans.**
- 3. That the final DAIP includes actions to review and improve existing and develop new child-friendly feedback and complaint mechanisms that are accessible and accountable to children and young people with disability.**
- 4. That the final DAIP acknowledge that accessibility extends beyond accessibility of the built environment and includes accessibility of services, activities and information.**
- 5. That extensive, meaningful and mandatory disability awareness training is provided to all educators and Department staff to understand disability and to provide appropriate and trauma-informed responses.**

6. That the Department considers developing new models of regular data collection and analysis that complement the Nationally Consistent Collection of Data on School Students with Disability (NCCD), and that this data is reported publicly and covers student feedback and complaints and levels of educational access and attainment.

I hope this feedback is useful. If you would like to discuss anything further, please do not hesitate to contact me.

Yours sincerely,



Helen Connolly
Commissioner for Children and Young People

Submission

1. That the students with disability transport assistance program procedure is reviewed as soon as possible to ensure that all decision-making about travelling allowances for students with disability:
 - a. Does not result in indirect discrimination under state and Commonwealth discrimination legislation;
 - b. Is transparent;
 - c. Is made in the best interests of the child, no matter where they live.

Under the Commonwealth *Disability Discrimination Act 1992* (DDA) and South Australia's *Equal Opportunity Act 1984* (the Act), indirect discrimination occurs when "employers or service providers put in place conditions, requirements or practices that appear to treat everyone the same but which actually disadvantage some people because of their disability".

As per the Department's School Transport Policy, students without disability are eligible for a travelling allowance "where the usual place of residence of the student is in South Australia and is 5km or more from the nearest government school or school bus service provided by the department." This is the only eligibility requirement for students without disability.

Students with disability, on the other hand, are required to meet further eligibility requirements under the Students with disability – transport assistance program procedure. In addition to meeting the five kilometre distance criterion, students with disability must also:

- be enrolled in a government special option where the special option is not in their local school; and
- have a NDIS plan with the inclusion of a support item for school transport.

It should not be harder for students with disability to get to and from school safely compared to students without disability. However, as the School Transport Policy states, if a student with disability "is attending their local preschool or school, or they live within 5kms of the Special Option attended, **transport assistance will not be provided.**"

Under s74 of the *Equal Opportunity Act*, "denying or limiting access to a benefit provided by the authority" is grounds for unlawful disability discrimination. On the face of it there appears to be an arguable case for indirect discrimination under the South Australian Act.

My office has heard from stakeholders who are concerned that children with disability and their families are being refused travelling allowances without adequate or transparent explanations and on grounds that do not appear to consider the best interests of the child. The distance criterion is particularly concerning insofar as it can deny children and families transport assistance for living too close to their school. Further, none of the cases we have reviewed appear to provide the Department with grounds to claim unjustifiable hardship.

To deny transport assistance to students with disability or significant health issues impacting on educational needs, whose families are otherwise unable to get them to school appears to deny children their right to access and participate in an education that respects their dignity.

As the table below demonstrates, decisions about whether transport support will be granted appear to be arbitrary and inconsistent, with similar cases leading to different decisions. Further, the Education and Children's Services Regulations do not provide clear guidance for decision-making, leaving it to the Chief Executive to determine the conditions by which a student with disability will be granted travelling allowance (Regulation 36).

<i>Transport support granted</i>	<i>Transport support refused</i>
<p>Child with Autism Spectrum Disorder and a rare chronic lung disease requiring lung and heart transplant. Family has no driver's licence. Family home located within 5 kilometres of school. Mother obliged to walk children in wheelchair to school in all weather.</p> <p>Decision: Agreement to provide transport assistance support.</p>	<p>Child with heart condition who can only walk short distances before becoming short of breath and cyanotic. Mother has to push child to school in wheelchair, but cannot do this when weather is wet or too hot.</p> <p>Decision: Refusal to provide transport assistance because child lives 450 metres away from the school and transport is therefore "parental responsibility".</p>
<p>Child with complex needs, including movement disorder, poor oral intake, severe global developmental delay, myoclonic seizures and fragile immunity, making the child more susceptible to illness. Mother was pushing child over train tracks and on bumpy terrain. Family lived within five kilometres of the school.</p> <p>Decision: Agreement to provide transport assistance because it is in the child's best interests.</p>	<p>Child with complex seizures and significant mobility issues who cannot walk to school. Advice from treating neurology specialist that the child requires a chaperone during transport. Family live less than a 5 minute drive but have no transport available to them. In 2019, child only attended school 20% of the time due to the above issues. Leader at school suggested transport assistance for the child's mother or carer.</p> <p>Decision: Refusal to provide transport assistance because Senior Executives were clear that transporting parents was not a favoured position.</p>

For more information and detailed case studies, please refer to pages 18-21 of my submission commenting on the draft Education and Children's Services Regulation.

The Students with disability – transport assistance program procedure is not due for review until March 2022. However, in light of these systemic concerns, this Office recommends that the Department prioritise the review of this program procedure in order to achieve Action 3.3 of the draft DAIP: to “support access to preschool and school for children and young people with disability via the students with disability transport assistance program”.

This review must clarify and make transparent eligibility criteria to ensure that all students with disability, no matter where they live and no matter which school they attend, can get to and from school safely and arrive in a state where they can learn.

2. That the final DAIP outlines how young people with disability will be supported to actively participate in decision-making that includes but is not confined to personalised learning plans.

The majority of actions in the draft DAIP relate to ensuring that Department employees with disability have opportunities to “engage in inclusion activities” and access to accessible information and workplace adjustments. The only specific reference to the participation and voice of children and young people with disability is in relation to the personalised planning process for developing One Plans (Action 2.2).

When it comes to decisions affecting students, it is largely parents who have the opportunity to “engage and have their say on policies which have an impact for students with disability”.

However, given that all of the Department’s policies and programs will affect children and young people’s lives and wellbeing, it seems logical that the final DAIP should outline how students with disability will be supported to actively participate and contribute to other initiatives, such as:

- The Review of the Students with disability transport assistance program procedure;
- The design and development of physical, social and sensory environments on campus, both inside and outside of classrooms, including the promotion of accessible play spaces (draft Action 1.1);
- The development and delivery of professional learning for educators to implement student volunteering that is inclusive and equitable (draft Action 4.1); and
- The provision of learning support and sports and recreation activities, particularly during the Year 7 to high school transition.

The lives and experiences of children and young people with disability are not homogenous. They want to be involved in decision-making not just as individuals with disability but as young people. Children and young people with disability should not only be consulted about the barriers to accessing education and other services, but also included in the development and monitoring of solutions and strategies to address these barriers.

These actions should have a clear starting date and specific timeframes for each step. The target for these actions should not just be a percentage of consultation participants

but rather measure the provision of supports and the quality of engagement according to young people's experiences and feedback (see Recommendation 3).

3. That the final DAIP includes actions to review existing and develop new child-friendly feedback and complaint mechanisms that are accessible and accountable to children and young people with disability.

Children and young people have consistently told me that they want organisations to be transparent and demonstrate accountability by ensuring that young people who have voiced their concerns or opinions are informed about the outcome of their feedback or complaint. They want staff to be kind and respectful and they want to know that the organisation has capabilities to deal with issues properly, completely and with discretion.

"Feedback must be there for everyone – there NEEDS to be actions done afterwards. The company, business or community must be ready to take on the feedback and there MUST be someone to implement change. Responses to feedback must be fast, efficient, reliable and must cater to the needs of whoever needs assistance."

Although the draft DAIP proposes a "feedback mechanism to capture the perspectives of employees on their experience across the employment lifecycle", it makes no mention of the Department's feedback and complaints mechanisms available to children and their families. Given that children and their families are the key clients of education services, it seems logical that they are provided with opportunities to voice their concerns and shape these services through responsive and accountable feedback mechanisms and processes.

This Office recommends a review of the accessibility of existing feedback or complaint mechanisms for all children and young people and their families and carers, particularly those living with disability, who wish to highlight systemic concerns.

This Office understands that the Department's Wellbeing and Engagement survey occurs annually and the results are published publicly each year. Opportunities to provide feedback or make complaints should exist all year round, be well promoted and offered in a variety of formats to ensure genuine engagement and to accommodate for varying levels of literacy and communication needs among children and their families.

While the Ombudsman SA, the South Australian Equal Opportunity Commission and the Commonwealth Australian Human Rights Commission have complaints handling functions, there is no independent oversight to enforce the Disability Standards for Education and safeguard children with disability against exclusionary or restrictive practices.

Once a complaint has been lodged, it should be taken seriously, acted upon and used to continuously improve the Department's services and engagements and communication with the community. The Department should also compile and publicly report on children's concerns to improve accountability and inform ongoing actions and priorities.

4. That the final DAIP acknowledge that accessibility extends beyond accessibility of the built environment and includes accessibility of services, activities and information.

Accessibility is not just about physical environments; it is also influenced by social environments, opportunities, staff behaviours, attitudes and expectations. Children and young people describe feeling safe and included, as feeling valued, accepted, listened to and taken seriously. When one student is excluded or made to feel unsafe, nobody feels safe. In contrast, when everyone feels safe and is included, everyone benefits.

Having access to information that a child understands is key to being able to participate fully, express concerns, provide feedback and access appropriate supports. Action 4.17 of the draft DAIP is to ensure that all staff are aware of “available support information” related to the Employee Assistance Program. This office recommends that the Department commit to an equivalent action for students that ensures information regarding support services, feedback and complaints mechanisms and other policies is made available and accessible to all students with varying communication needs and levels of literacy.

Evidence suggests that teachers need to be better equipped to identify and understand disability-related needs in their students and respond safely and appropriately with reasonable adjustments and support strategies, including evidence-based positive behavioural support approaches.

UNESCO and the International Bureau of Education have summarised the following eight indicators that are associated with greater inclusion:

- 1. Everyone is made to feel welcome**
- 2. Students are equally valued**
- 3. There are high expectations for all students**
- 4. Staff and students treat one another with respect**
- 5. There is a partnership between staff and families**
- 6. The school is accessible to all students**
- 7. Senior staff support teachers in making sure that all students participate and learn**
- 8. The school monitors the presence, participation and achievement of all students.ⁱ**

These indicators could be used to inform guidance for teacher education and training (See Recommendation 5). A focus on positive and practical inclusion and participation outcomes and indicators is crucial to addressing a key finding from a 2016 Senate Inquiry: that “the biggest predictor of success of a child ... is that people around them have expectations of them”.ⁱⁱ

- 5. That extensive, meaningful and mandatory disability awareness training is provided to all educators and Department staff to understand disability and provide appropriate and trauma-informed responses.**

This recommendation relates to Recommendation 4 above. The draft DAIP mentions support and “learning opportunities” available to staff via E-learning courses and a range of learning opportunities through the Special Education Resource Unit.

Comprehensive and ongoing disability awareness and engagement training should be a compulsory part of education and training for all educators and Department staff, and this training should:

- Encourage positive practice in line with the practical and positive inclusion outcomes and indicators mentioned in Recommendation 4 above, rather than simply discourage negative practice;
- Safeguard against exclusionary practices and restrictive practices, including restraints and seclusion through the promotion of evidence-based positive behavioural support approaches;
- Be developed and delivered by or in collaboration with people with disabilities, the disability sector and other agencies with disability expertise;
- Be regular, ongoing and culturally appropriate;
- Have a focus on children's rights, trauma-informed practice and de-escalation techniques;
- Acknowledge the diversity of children living with disability; and
- Improve attitudes and responses of staff across all services.

6. That the Department considers developing new models of regular data collection and analysis that complement the Nationally Consistent Collection of Data on School Students with Disability (NCCD), and that this data is reported publicly and covers student feedback and complaints and levels of educational access and attainment.

Regular and consistent data is the basis of appropriate service funding, planning, provision and evaluation, and publicly reported data is central to accountability.

While the draft DAIP proposes a “reporting dashboard to monitor workforce profile data including aggregated information on people living with disability in the department”, the only student-related data measures relate to the use of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) to “inform improved planning and support in the department” (Action 4.7).

However, while the NCCD records the number of students with disability in schools and the adjustments they receive, it does not capture levels of education access and attainment. Further, the NCCD data relies on education providers to report data and is therefore likely to underrepresent the prevalence of disability-related need. While the draft DAIP's target of having 100% of schools participate in the NCCD annually is commendable, students and parents are not given any opportunity to report their support needs and inform the NCCD.

This Office supports the recommendation made by the National Children's Commissioner in the 2019 Children's Rights Report that the NCCD should include children that do not qualify for support or do not have access to mainstream schools.ⁱⁱⁱ

There is currently no systematic collection and reporting of complaints data. To fill these gaps, complement the NCCD and improve planning and support, the Department should

consider new models of regular data collection and analysis that use consistent definitions of disability and monitor the following:

- The prevalence of disability according to consistent definitions;
- Rates of exclusions, suspensions and expulsion for students with disability;
- Use of restrictive practices in schools;
- Levels of educational access and attainment for students with disability; and
- Feedback and complaints data from students with disability, their families and carers, and from education providers.

ⁱ UNESCO and the International Bureau of Education 2016, “Reaching out to all learners: A resource pack for supporting inclusive education”, p. 47. Available at <http://unesdoc.unesco.org/images/0024/002432/243279e.pdf>.

ⁱⁱ Senate Standing Committee on Education and Employment, “Access to real learning: the impact of policy, funding and culture on students with disability”, 2016, p. 24. Available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report.

ⁱⁱⁱ National Children’s Commissioner, Australian Human Rights Commission, 2019. In Their Own Right – Children’s Rights Report 2019, p. 18. Available at <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>.