

# Redfern Legal Centre

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## Senate Education and Employment References Committee

PO Box 6100  
Parliament House  
Canberra ACT 2600

20 August 2015

Attention: Senator Sue Lines, Chair

Please find attached our policy submission: **Access and Attainment for Students with a Disability** in response to the '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' Inquiry.

We would welcome the opportunity to appear before the Committee further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Joanna Shulman  
Chief Executive Officer

# Redfern Legal Centre

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SUBMISSION:

ACCESS AND ATTAINMENT FOR STUDENTS WITH A DISABILITY

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DATE:

20 August 2015

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## 1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent community legal centre providing access to justice for disadvantaged individuals in the Redfern area and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies.

Through our exposure to vulnerable clients across this range of legal practice areas, RLC has unique insight into common legal difficulties and the value of potential reform. We work collaboratively with key partners to promote awareness of legal issues and legal rights within the community.

## 2. RLC's work in Disability Discrimination

RLC has a long history of working in disability discrimination, and has assisted a number of parents of students with disabilities facing discrimination by education providers. This has provided RLC with insight into the forms of discrimination faced by students, as well as the personal and social impact this can have on students and their families. RLC was one of the lead agencies which worked on the NGO shadow report to the United Nations for the Rights of People with Disability in 2012.

## 3. RLC's view in summary

RLC welcomes the opportunity to comment on current levels of access and attainment for students with a disability in the current education system.

It is our position that, despite anti-discrimination legislation and the introduction of the *Disability Standards 2005*, students with disabilities still face significant barriers in accessing education. These barriers can have significant impact on the well-being of students and their families, and can impair the capacity of students with disabilities to participate fully in the community.

These barriers frequently stem from a misunderstanding or lack of awareness of the *Disability Standards*, poor communication between education providers and parents or caregivers and the underlying expectation that parents and caregivers should bear the burden of responsibility with regard to ensuring their child has access to appropriate education. These issues are compounded by an inadequate complaints system which can be inefficient, costly and ineffective, thus dissuading parents of students with a disability from seeking remedies, and ultimately leading to little systemic change in relation to levels of access of attainment of students with disability in the current education system

## 4. RLC's recommendations

RLC's findings and recommendations are discussed in response to the following Terms of Reference: A, B and H.

Term of Reference A

**Recommendation 1:** A specific complaints mechanism should be established with the authority to effectively address individual complaints and report on adherence to obligations across the sector, thus presenting opportunities for systemic change.

**Recommendation 2:** The Federal Court and Federal Circuit Court become no costs jurisdictions in discrimination matters, with exceptions made for frivolous or vexatious proceedings.

**Recommendation 3:** The *Disability Standards 2005* are amended to remove ambiguity, and education providers are supplied with significant training in order to understand their obligations in relation to students with disabilities.

**Recommendation 4:** Education Providers be required to conduct regular reviews of their discipline procedures for students with disabilities, and provide training for any and all staff who may have significant contact with students with disabilities.

#### Term of Reference B

RLC makes findings under Term of Reference B that achieving appropriate access to education can lead to significant social, personal and economic benefits for students with disability, as well as providing a positive impact for the community as a whole.

#### Term of Reference H

**Recommendation 5:** Funding be made available to education providers specifically for training and hiring of additional staff to assist with the provision of education to students with a disability, or for the purposes of upgrading facilities to meet the needs of students with disabilities if necessary.

**Recommendation 6:** Disability support and funding criteria should be comprehensive and flexible enough to take into account the interaction of disabilities including learning difficulties and the degree of impairment for individual students **Recommendation 7:** Education Providers should develop training programs for all staff to ensure they are aware of appropriate conduct with students with disabilities, and regularly review this training, particularly following any incident involving apparent inappropriate discipline.

### 5. Responses to specific Issues

#### **Term of Reference A - 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;**

In RLC's experience, students with disabilities are not being provided adequate access in education, a situation with detrimental consequences for students, their families and the community. RLC has identified some of the main causes for this as:

- i) Inadequate Complaints Mechanisms
- ii) Lack of Awareness of the *Disability Standards*
- iii) Discrimination by Other Services
- iv) Failure by Education Providers to implement appropriate discipline practices

### *i) Inadequate Complaints Mechanisms*

Currently, where students or their parents wish to make a complaint about an education provider failing to meet their obligations, this must be done via a formal complaint under the *Disability Discrimination Act 1992*, and, where this is unsuccessful, through court proceedings. These processes are inadequate for a number of reasons. Firstly, parents and students are often seeking to maintain a positive relationship with their school, and may choose not to bring a formal complaint due to concerns about jeopardising this.

Secondly, the current complaints procedure is incredibly lengthy, and, as such, is often unable to provide the practical results sought until they are rendered ineffective. Thirdly, the prospect of commencing court proceedings and the associated financial cost can leave parents unwilling to pursue the matter, meaning education providers are not held accountable for failures to meet their obligations.

Finally, relying solely on an individual complaints process limits the possibility of addressing systemic change within the system. Even where an individual complaint is successful in achieving a positive outcome for a student with a disability, this decision will affect only a single student, rather than addressing failures across the system. This is not a sustainable model through which to reform the education landscape to more effectively and holistically provide access for all students with a disability.

RLC advocates the establishment of an independent enforcement mechanism, similar to the Fair Work Ombudsman, specifically focused on education providers' adherence to their obligations under the *Disability Standards* and the *Disability Discrimination Act 1992*. This mechanism would be able to work collaboratively with education providers, parents and students in order to develop strategies and resolutions to complaints in a timely and effective manner. Additionally, the mechanism should have the power to report on general observance and trends and initiate investigations into adherence to the *Disability Standards*, thus developing recommendations for more systemic change, rather than addressing solely individual complaints.

Where such a mechanism is unable to be established, or where parents elect to pursue their matters in through the Federal Court or Federal Circuit Court, these should become no cost jurisdictions in discrimination matters, in order to relieve the financial barrier preventing many complainants from seeking redress.

**Recommendation 1:** A specific complaints mechanism should be established with the authority to effectively address individual complaints and report on adherence to obligations across the sector, thus presenting opportunities for systemic change.

**Recommendation 2:** The Federal Court and Federal Circuit Court become no costs jurisdictions in discrimination matters, with exceptions made for frivolous or vexatious proceedings.

## ii) *Lack of Awareness of the Disability Standards*

The introduction of the Disability Standards in 2005 represented a positive commitment to address concerns over access to education for students with disabilities. However, in the years since their development, there has not been significant adoption or adherence to the standards, with many advocacy groups suggesting the standards are too vague or that education providers are not sufficiently cognisant of obligations arising under the standards.<sup>1</sup> As a result, many education providers can misinform parents or carers that they do not have the facilities or capacity to appropriately provide education to students with disabilities, and therefore deny enrolment, apparently unaware that the standards require education providers to be responsible for the implementation of necessary adjustments.

Where parents are similarly unaware of the standards, or their rights under the standards, they may choose not to pursue matters, believing the education provider to have the authority to deny enrolment in those circumstances. Even where parents do advocate for their child's rights to be included or to have necessary arrangements made, encountering hostility from education providers will naturally have an adverse impact on the relationship between parents and the education provider, rather than encouraging a constructive relationship in the best interests of the student.

If the Disability Standards are to be effective, it is vital that they be reformed to provide further clarity regarding the obligations of education providers and that significant effort is made to ensure all education providers, staff and parents are fully informed of the nature of the standards. We note that the 2015 review into the *Disability Standards 2005* is currently underway, and use this opportunity to reaffirm the need for clarity within the standards and the development of awareness programs to ensure all education providers and parents/caregivers are aware of their implications.

Additionally, as outlined above, it is paramount that an enforcement mechanism be established, which would assist in promoting awareness of the *Disability Standards* and ensure their effective implementation.

A crucial area demonstrating the lack of adherence to the *Disability Standards* is in the area of communication between education providers and the parents of students with a disability. The requirement for consultation between education providers and students with a disability, or an associate of the student, is evident throughout the *Disability Standards*.<sup>2</sup> These standards recognise the important perspective students and their parents can contribute in determining strategies and approaches to the provision of education to specific students with a disability. This is of particular concern for students with a disability, who may, in some circumstances, have difficulty communicating to their parents any difficulties or concerns they are experiencing. Parents and caregivers will therefore be even more reliant on consultation with education providers to grasp an accurate sense of the student's experience.

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<sup>1</sup> Department of Education, Employment and Workplace Relations, 2012, *Report on the Review of Disability Standards for Education 2005*, Australian Commonwealth, 39

<sup>2</sup> See, for example, Standards 5.2(2), 6.2(2), 7.2(5),

Despite this, RLC has encountered multiple clients who have felt insufficiently consulted on matters relating to students with a disability, and, frequently, are only contacted once situations have escalated to a more serious level. This can cause significant distress for students, parents and education providers, and could be avoided through close adherence to the requirements for ongoing and detailed consultation between education providers and associates of the student.

Further, where parents have been consulted and made clear the nature of a disability and the likely impact this may have on their participation of access to education, it is imperative that education providers ensure detailed and holistic records are maintained. This can ensure all staff who have involvement in providing education services to the students are made aware of the full nature of the disability and any specific requirements arising from this, allowing for access to education to occur at all levels. RLC has had experience with clients who frequently found education providers' records regarding their child's disability to be entirely inadequate, despite the provision by families of various medical reports and documentation.

**Recommendation 3:** The *Disability Standards 2005* are amended to remove ambiguity, and education providers are supplied with significant training in order to understand their obligations in relation to students with disabilities.

*iii) Discrimination by other services*

Even where education providers are compliant with the Disability Standards, discrimination by other related services, such as after-school care, can impact the choices made by parents and the educational experiences of students with disabilities.

**Case Study**

Lucy's son David\* has been diagnosed with Autism. Lucy enrolled David in an after-school care program, and assisted in providing training for staff in order to ensure they were able to support him. Despite this, Lucy was later informed that David's enrolment had been cancelled due to David's autism and he would not be permitted to attend. RLC was able to assist Lucy to advocate for David under anti-discrimination legislation, and David now attends after school care. However, many parents and caregivers unaware of their rights may not seek out legal assistance, and, as such, discrimination such as David's experience can go unchecked.

Lucy's story highlights how a number of services can be involved in ensuring students have adequate access to education, and each of these must be made aware of their obligations to provide access to services for students with disabilities under s24, *Disability Discrimination Act 1992*.

*iv) Failure to develop appropriate discipline practices*

RLC understands that allegations regarding the inappropriate discipline of students with disabilities were one of the catalysts for this inquiry. This issue is certainly of great concern to RLC, having observed the detrimental impact inappropriate discipline can have on students with disabilities and their families.

**Case Study**

Julia\* is a single mother with two children, Mark\* and Nathan\* who both present on the Autism Spectrum, and suffer from additional mental health issues. From 2010, both children were enrolled at the same primary school in years 1 and 2 respectively, with Julia having been informed the school was adequately equipped to support the needs of her children. The children were both suspended on multiple occasions for non-compliant behaviour, requiring Julia to take time out of work to provide supervision, and were ultimately excluded from a school excursion as a result of their behaviour.

Mark was later allegedly assaulted by his teacher who pushed him into a desk as a result of non-compliance. While Julia and the school met to discuss ongoing strategies to manage the behavioural concerns, Julia finds the school is not proactive in ensuring its systems are updated, and are often unaware of vital documents provided to them. Julia is later told by another parent at the school that both Mark and Nathan have been physically restrained on multiple occasions by staff, without her having been informed by the school. As a result of the interactions and difficulties, Julia has been hospitalised for stress and has been unable to work.

Julia's situation demonstrates the escalation of behaviour which can occur if education providers fail to implement positive discipline strategies. Additionally, where staff are not adequately trained, resorting to inappropriate discipline is not uncommon, and discipline of students with disabilities occurs at a disproportionate rate to other students.<sup>3</sup> This is damaging for a number of reasons. Events such as this are naturally distressing for students and their parents, and can result in an escalation of behaviour, further compounding the issue. This escalation in behaviour will further impact on students capacity to learn, and can produce hostility between education providers, students and parents. Ultimately, situations such as this can lead to parents or carers choosing to move to a different education provider, removing the burden of developing appropriate policies from education providers. These decisions are often highly costly for families, and it is inappropriate that this burden should fall to them as a result of education providers being ill-equipped.

**Recommendation 4:** Education Providers be required to conduct regular reviews of their discipline procedures for students with disabilities, and provide training for any and all staff who may have significant contact with students with disabilities.

<sup>3</sup> CPRD Australian Civil Society Report to the United Nations CRPD, August 2012, 166

### *Impact of Inadequate Access*

As articulated in Julia's situation above, the psychological impact of encountering significant roadblocks or having a hostile relationship with education providers is significant, not solely for students, but also their parents and caregivers.

Additionally, in circumstances such as Julia's, where students are suspended as a result of inadequate resources and management on behalf of the education provider, this significantly affects parents' capacity to work and therefore can have a detrimental financial impact on the entire family.

Finally, where parents are forced to choose alternative education providers, either because students are denied enrolment, or parents themselves determine the support provided is inadequate, significant adjustments may need to be made to the family unit in order to accommodate the change. These decisions often understandably lead to parents sending students with disabilities to 'special' schools, which have seen a significant rise in enrolment in recent years, with approximately 31 per cent of all students with a disabilities in NSW enrolled in these education providers.<sup>4</sup> An increase in the prevalence of these schools may lead to mainstream schools not recognising their obligations to provide adequate access to students with disabilities, misunderstanding this to be the purview of specific education providers.

Disability Discrimination Legislation makes clear that education should be accessible and inclusive for all students,<sup>5</sup> including those with a disability, and the Disability Standards provide significant guidance to assist education providers to adhere to this legislation and understand their obligations. Given this, it is inequitable that students, parents and caregivers should be required to bear the burden associated with ill-equipped or non-compliant schools.

### **Term of Reference B - The social, economic and personal benefits of improving outcomes for students with disability at school and in further education and employment;**

There are clear benefits, both for people with a disability and for the wider community, to ensuring adequate access to education. Firstly, students who attend mainstream schools are much less likely to progress to segregated services in adulthood.<sup>6</sup> This provides people with disabilities with greater opportunity to be more actively engaged in mainstream community and society, allowing the community to fully reflect and celebrate diversity, rather than allowing informal segregation to continue.

Outside of the clear imperative to ensure all students have access to education, including students with disabilities, having inclusive access to education providers also plays a crucial role in students' social development, as they interact with staff and peers. While this is of paramount importance for all students, this is of particularly significance for

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<sup>4</sup> CPRD Report, 163

<sup>5</sup> Disability Discrimination Act 1992 (Cth), s22

<sup>6</sup> CPRD Report, 163

students with disabilities who may face social exclusion as a result of their disabilities. Currently, students with disabilities in mainstream schools experience incidents of bullying at a higher rate than other students.<sup>7</sup> Education providers should be alert to the additional support needs of students with disabilities, particularly in responding to bullying. Appropriate response and training in this area can lead to a more inclusive education environment for students with disabilities.

It is also worth noting that, while inclusive educational experiences can produce positive social, economic and personal benefits for students with a disability, the converse is also true. That is, a failure to provide adequate access to education will be actively detrimental to the wellbeing of students with a disability, causing significant psychological and social harm with long-term effects. Education providers must be working not solely to increase benefits for students with a disability, but also to ensure any practices they have in place, or the omission of specific practices, is not causing harm to students with a disability. This is in fact mandated by the *Disability Discrimination Act* 1992 which requires reasonable adjustments to be made for students with a disability.<sup>8</sup>

### **Term of Reference H - What should be done to better support students with disability in our schools**

As outlined under Term of Reference A, above, one of the most crucial actions to be undertaken is the implementation of an alternative enforcement mechanism. In order to ensure this initiative is successful, it must also be coupled with additional funding and training across the sector.

#### **i) Funding**

One of the crucial reforms required to address the lack of access for students with disabilities is an increase in the allocation of funding and resources in order to better equip schools to meet the needs of students with disabilities. This allows for education providers to hire staff, such as trained teachers aides, who can provide additional assistance if required by students with disabilities. Additional funding also allows for education providers to ensure available facilities are suitable and accessible for all students, including those with disabilities.

Further, the structure of funding provision for students with disabilities should be reassessed. Our understanding of the current NSW Department of Education funding model, is that additional funding is only made available to public schools where there is a medically diagnosed disability. This significantly restricts support available for students with learning disabilities, the support for whom is intended to be funded within education providers' budgets. This approach can limit support available for students suffering from multiple learning difficulties, the compound impact of which may create additional needs similar to those students with a disability. RLC has had experience with clients suffering from learning difficulties for whom additional funding was not made available. It was only at the point at which the detrimental psychological impact of these unaddressed learning

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<sup>7</sup> CPRD Report, 166

<sup>8</sup> *Disability Discrimination Act* 1992, s5; s22

difficulties resulted in the development of a diagnosed mental illness that funding was provided to support their needs. This is clearly a significantly harmful approach, as it fails to address the needs of students before serious escalation occurs, with a damaging personal and educational impact.

**Recommendation 5:** Funding be made available to education providers specifically for training and hiring of additional staff to assist with the provision of education to students with a disability, or for the purposes of upgrading facilities to meet the needs of students with disabilities if necessary.

**Recommendation 6:** Disability support and funding criteria should be comprehensive and flexible enough to take into account the interaction of disabilities including learning difficulties and the degree of impairment for individual students

## ii) Training

It is also necessary to dramatically improve the training of staff of educational facilities with regard to responding appropriately to students with disabilities. While this includes raising awareness of the Disability Standards in order to ensure education providers are not denying access, this training must also extend to day-to-day measures to ensure students with disabilities are being treated with dignity and respect by staff. For example, the use of physical restraint against students with disabilities is alarmingly high, despite being inappropriate and often contributing to an escalation of disruptive behaviour, rather than minimising it. Inappropriate responses by staff can lead to students with disabilities feeling unsafe in their educational environment, significantly impacting their capacity to learn, and leading parents to consider choosing alternative education providers. Training programs can be tailored to, or derived from, recommendations by the external complaints mechanism in order to most effectively deliver results.

**Recommendation 7:** Education Providers should develop training programs for all staff to ensure they are aware of appropriate conduct with students with disabilities, and regularly review this training, particularly following any critical incident.

## 6. Conclusion

The principle that students with disabilities should be afforded equal access to education is enshrined in statute, yet frequently unrealised in practice. RLC is greatly concerned that parents, caregivers and, most significantly, students themselves are being forced to bear the burden of education providers failing to meet required standards. Combatting this discrimination will require significant funding increases and dedicated training programs in order to ensure all education providers are aware of their responsibilities and have the resources to put these into practice effectively.