



Submission

Quality Schools

Review to Achieve Educational Excellence in Australian Schools

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We believe that a quality school means a school that welcomes and provides full access to the diverse range of Australian students, on the basis of equal opportunity and non-discrimination.

Further, we hope that this review will appreciate that a quality education system is one that values the potential of every child, including children with disability, and their right to access a quality inclusive education, a fundamental human right as recognised in various international human rights instruments, including:

- Article 24 of the UN Convention on the Rights of Persons with Disabilities (**CRPD**) (as clarified by General Comment No. 4); and
- Sustainable Development Goal 4” to “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”.

We submit that the maintenance and continued investment in a “dual system” of education, comprising separate segregated settings for students with disability, whether in “special” schools, co-located education support units or separate classrooms in general education schools, is fundamentally discriminatory, not supported by the research evidence and inconsistent with inclusive education as the modality by which people with disability realise the universal human right to education.

We hope that the Panel has the courage to recommend robust changes to law, policy and practice to ensure that all our schools become inclusive positive learning environments promoting social cohesion, belonging, active participation in learning and a complete school experience with positive peer interactions.

This review presents an opportunity for the Panel to contribute to designing a high expectations and evidence-based inclusive education system that all our children deserve. Its recommendations will be critical to progressing towards a universally accessible and inclusive education system for all Australian students *or* entrenching a regressive and harmful segregating model of education for students with disability, contributing to greater academic marginalisation and social exclusion.

Recommendation: Review of the Australian education system, including law, policy and practice, to ensure compliance with international human rights obligations and commitments to inclusive education, including Article 24 of the CRPD and General Comment No.4

Recommendation: Ensure consistent use and understanding of the term “inclusive education” to ensure that measures and practices are evidence-based and compliant with the obligation to implement an inclusive education system

The CRPD was ratified by Australia on 17 July 2008.

Article 24.1 of the CRPD requires State Parties to “*ensure an inclusive education system at all levels*” and Article 24.2 provides more specifically that persons with disabilities are not to be excluded from the general education system on the basis of disability and that they have a right to access an inclusive, quality education on an equal basis with others in the communities in which they live. Article 24 also mandates reasonable accommodation of the individual’s requirements and for supports to be provided “within the general education system”.

In August 2016, the UN Committee on the Rights of Persons with Disabilities (**Committee**) issued General Comment No. 4, as a formal guidance instrument on the meaning and scope of *Article 24* of the CRPD. Together, Article 24 and General Comment No.4 are the most authoritative instruments on inclusive education as a human right for people with disability.

General Comment No.4 was developed through a near 2-year consultative process starting in 2015 involving stakeholders including Australia.

A key reason for the development of a General Comment on inclusive education was the Committee’s concern, after reviewing a decade’s worth of country implementation reports, of widespread failure to ensure compliance with Article 24, including because of a lack of clarity around the meaning of “inclusive education”.

As recognised by European Commissioner on Human Rights in a recent comment, some of this confusion has arisen through the “rebranding” of segregated models of delivery as “inclusive”:

“In other instances, countries appear to be willing to settle for some form of segregation and rename segregated forms of education under a more acceptable brand (such as ‘appropriate education’ in the Netherlands) or even as inclusive education (for instance ‘inclusive education centres’ in Romania).”¹

As such, perhaps the most critical clarification in General Comment No.4 is as to the the need to distinguish between “exclusion”, “segregation”, “integration” and “inclusion”. Paragraph 11 sets out important definitions:

- “**Exclusion** occurs when students are directly or indirectly prevented from or denied access to education in any form.”
- “**Segregation** occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities.”
- “**Integration** is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions.”
- “**Inclusion** involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences.

In this regard, it is important to note that the same phenomenon is observed in Australia where special education organisations such as the Australian Special Education Principals Association continue to advance the position that

¹ See <https://www.coe.int/en/web/commissioner/-/respecting-the-human-rights-of-persons-with-psychosocial-and-intellectual-disabilities-an-obligation-not-yet-fully-understood>

“inclusion is not a place” and that “special schools” and other segregated models can be legitimately characterised as forms of inclusive education², a position that cannot be reconciled with Article 24 of the CRPD, General Comment No.4 or any logical concept of social inclusion.

In his recent report³, the European Commissioner also noted the tendency for “vested interests” to preserve the status quo and resist inclusive education:

Professional groups involved in special education, such as teachers, psychologists and testing centres frequently oppose desegregation in order to protect vested interests.” [pp 10-11]

A correct understanding and application of these concepts is critical to implementing a genuinely inclusive education system. We believe that government should take a leading and active role in addressing the misuse of “inclusive education” and the rebranding of segregated education as “inclusive”.

Finally, it is important to note that General Comment No.4 is instructive as to the matters that the Committee will consider in their future reviews of compliance by State Parties. In this regard, the Committee in October 2017 issued questions to Australia, including notably:

“26. Please explain how the State Party’s new education funding model supports progressive implementation of article 24 of the Convention, including in the light of the Committee’s general comment No. 4 (2016) on the right to inclusive education, which calls for the transfer of resources from segregated to inclusive education settings.”

The experience of students with disability and families

Recommendation: Funds be allocated to support students and families to access an inclusive education, avoid discriminatory practices and ensure that legal obligations are being met

² https://www.researchgate.net/publication/227643447_Towards_inclusion_an_Australian_perspective

³ <https://rm.coe.int/fighting-school-segregation-in-europe-through-inclusive-education-a-positi/168073fb65>

The reality for students with disability in Australia is that, too often, they are offered a “qualified” opportunity to participate in a system established before people with disability were recognised as holders of educational rights and without regard to their functional needs. That system remains resistant, both culturally and in terms of educational practice, to accommodating their participation and inclusion, particularly for students with intellectual, cognitive or sensory disabilities.

Ten years after the CRPD and notwithstanding the *Disability Discrimination Act 1992* (and the Disability Standards for Education 2005⁴ enacted pursuant to it), the experience of students with disability in the Australian education system is too frequently one of discrimination and devaluation, isolation, lack of resources and supports, denial of enrolment or other forms of “gatekeeping”⁵, inadequately trained teachers, lack of expertise in inclusive practices and inflexible structures and approaches that operate as barriers. Too often, students with disability experience practices that are not evidence-based, that tend to isolate them and that result in a lower quality educational provision and consequently poor educational outcomes.

A recent study of over 700 families across Australia identified that a staggering 71% of those surveyed reported either “gatekeeping” or restrictive practices⁶.

These concerns are backed up by many Parliamentary and departmental inquiries across Australia, notably the national 2016 Report by the Education and Employment References Committee of the Australian Senate into the impact of policy, funding and culture on students with disability⁷.

⁴ The Disability Standards for Education not only fail to even mention “inclusion” or “inclusive education”, they have been in place since 2005, that is for most of the period of 2003-2015 which has seen a significant increase in segregation of Australian students with disability.
https://docs.education.gov.au/system/files/doc/other/disability_standards_for_education_2005_plus_guidance_notes.pdf

⁵ “Gatekeeping” is an unconscionable practice and refers to the formal and informal discouragement of enrolment and attendance of students with disability by local mainstream schools, as identified in 2016 Report by the Education and Employment References Committee of the Australian Senate into the impact of policy, funding and culture on students with disability.

⁶ <http://allmeansall.org.au/wp-content/uploads/2017/10/TIES-4.0-20172.pdf>

⁷ see

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Report

It seems clear that the experiences of Australian students with disability are strongly characterised by systemic “integration”, “segregation” and “exclusion” – not “inclusive education”, as those terms are defined in paragraph 11 of General Comment No. 4.

The continued operation, demand for and growth of a parallel and high-resourced system of segregated education alongside the general education system, evidences systemic failure of the general education system to ensure access and inclusion of every Australian student and a denial of their fundamental human rights. Reports also suggest significant increases in rates of “home schooling”, particularly for autistic students.

As recognised in the 1954 US case of *Brown v Board of Education* in relation to racial segregation, the notion of “separate but equal” has no place in education.

“Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group...Any language in contrary to this finding is rejected. We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal” - Earl Warren, Chief Justice of the U.S. Supreme Court

We do not see this reasoning to have different application to students with disability and in fact, when seen against the background of other efforts to make quality education accessible to women or to racially marginalised groups, the denial to whom was considered acceptable in earlier but recent times, many parallels are evident. In this regard, we believe that segregated education of students with disability is also discrimination *hidden in plain sight*.

It is particularly disturbing that in the last decade or longer, a period that also coincided with ratification of the CRPD and the introduction of the Disability Standards for Education, there has been significant growth in segregated education of students with disability⁸. This concern has also been expressed

⁸ Australian Bureau of Statistics. 2013. Schools Australia. View at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4221.02013> Viewed on 15 April, showing that between 1999-2013, there was an increase in special schools of 17% Australia

at an international level where Australia was asked to explain this by the UN Committee on Economic, Social and Cultural Rights in May of this year:

“Rodrigo Uprimny, Committee Expert and Co-Rapporteur for Australia:

"As for persons with disabilities and inclusive education, there was evidence of a rise in segregated education. What measures was the Government taking to ensure inclusive education across the country?"⁹

A week before the above Committee session, the Australian government released a fact sheet showing a 35% growth in segregation of students with disability in special schools alone¹⁰.

As such, while the current and previous governments have expressed their commitment to inclusive education, including through the National Disability Strategy, the growth in segregation speaks to the national failure in education of students with disability.

⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21677&LangID=E>

¹⁰

www.aihw.gov.au/WorkArea/downloadasset.aspx?fid=3D60129559751&h=ATOjvsdyRLQi2FWQUPRmTNaAUtMSsOK101k1xbfxD88_Qo1x2ILZRy01Mcv-u7SU9PD7xPRGitCiuUU05jY4Wlxe6wftpgKBLTeyY5yrw-uVqvo4E_1DAw8YfVMHvkuv1fvjKJ-5JZ5_K0BCuojAP2A_vZ3GTpkhG1zReCKG12Do_At17nW4VY-vlsb8NG_0plrsMyRkkx_QozNTDpiLugkgrCHILsF9Q0XA1aZ-unbHAbDjjMqYK_SdJquQ-IQNj2_3p4r3McWk5gTLocnz8mKhCDkNLauGfCfAsEY

Evidence basis for inclusive education

Recommendation: Funding only be allocated to evidence based and best practice inclusive education across the education system

Recommendation: The Australian government adopt a national desegregation strategy in relation to education of students with disability and provide systemic funding to support progressive implementation of inclusive education

For over 40 years, the body of relevant research into education of students with disability has overwhelmingly established inclusive education as producing superior social and academic outcomes for all students.

Italy ended segregated education in 1978 when it closed its special schools and today 99% of students with disability are fully educated in regular classrooms. More recently, the Canadian province of New Brunswick prohibited segregated education in the public education system through its internationally award-winning legally enforceable Policy 322¹¹.

The research has consistently found that academic and social outcomes for children in fully inclusive settings are without exception better than in the segregated or partially segregated environments¹². Unfortunately segregated education remains a historically-entrenched practice that continues to be suggested to families and educators as the appropriate default option, despite having virtually no evidence basis.

In the case of students with intellectual disability, a comprehensive 2008 literature review by Australian academic expert Dr Robert Jackson found that no study has ever demonstrated “special” segregated education to produce better outcomes.¹³

¹¹ See <http://www.startingwithjulius.org.au/canada-policy322/>

¹² "Inclusion in Education: Towards Equality for Students with Disability", Dr K. Cologon, Children and Young People With Disability Australia.

¹³ Jackson, R (Ibid), at page 13 stated "No review could be found comparing segregation and inclusion that came out in favour of segregation in over forty years of research".

A recent study from the Netherlands reported better academic outcomes for children with IQs of 30-35 in general education than for children with higher IQs of 50 educated in “special” schools.¹⁴

The most recent comprehensive review of the research was undertaken in an international report entitled “A Summary of the Evidence on Inclusive Education” released in 2017¹⁵, by Dr Thomas Hehir, Professor of Practice in Learning Differences at the Harvard Graduate School of Education, with Abt Associates.

The Report documents the results of a systematic review of 280 studies from 25 countries.

The Report defines inclusive educational settings in accordance with General Comment No. 4.

The Report recognises that growth in inclusive practices stems from increased recognition that students with disabilities thrive when they are, to the greatest extent possible, provided with the same educational and social opportunities as non-disabled students [p4].

The Report also acknowledges the significant barriers of negative cultural attitudes and misconceptions amongst school administrators, teachers, parents (including some parents of children with disabilities) and notes the need for general societal education.

Key findings of the Report include:

1. *There is “clear and consistent evidence that inclusive educational settings can confer substantial short and long-term benefits for students with and without disabilities”.* [p1]

- “A large body of research indicates that included students with disabilities develop stronger skills in reading and mathematics, have higher rates of attendance, are less likely to have behavioural problems, and are more likely to complete secondary school than

¹⁴ de Graaf, G. & de Graaf, E. (2012), *Development of self-help, language and academic skills in Down syndrome*. Paper presented at 11th World Down Syndrome Congress, Cape Town, South Africa.

¹⁵ http://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf

students who have not been included. As adults, students with disabilities who have been included are more likely to be enrolled in post-secondary education, and to be employed or living independently.” [p1]

- Multiple reviews indicate that students with disabilities educated in general education classrooms outperform their peers who have been educated in segregated settings. A 2012 study by Dr Hehir examined the performance of 68,000 students with disabilities in Massachusetts and found that on average the greater the proportion of the school day spent with non-disabled students, the higher the mathematic and language outcomes for students with disabilities. [p13]
- The benefits of inclusion for students with disabilities extend beyond academic results to social connection benefits, increased post-secondary education placement and improved employment and independence outcomes. [p15] Again, there is a positive correlation between social and emotional benefits and proportion of the school day spent in general education classrooms. [p19]
- The Report states that “...research has demonstrated that, for the most part, including students with disabilities in regular education classes does not harm non-disabled students and may even confer some academic and social benefits. Several recent reviews have found that, in most cases, the impacts on non-disabled students of being educated in an inclusive classroom are either neutral or positive.” [p7] Small negative effects on outcomes for non-disabled students may arise where a school ‘concentrates’ students with severe emotional and behavioural disabilities in the one class (itself a form of segregation). [p9]
- It further states that “A literature review describes five benefits of inclusion for non-disabled students: reduced fear of human difference, increased comfort and awareness (less fear of people who look or behave differently); growth in social cognition (increased tolerance of others, more effective communication with all peers); improvements in

self-concept (increased self-esteem, perceived status, and belonging); development of personal moral and ethical principles (less prejudice, higher responsiveness to the needs of others); and warm and caring friendships.” [p12]

2. *Teaching practice is central to ensuring that inclusive classrooms provide benefits to all students.* [p9]

- Teachers with positive attitudes towards inclusion are more likely to adapt the way they work for the benefit of all students and are more likely to influence colleagues in positive ways to support inclusion. [p9]
- Research suggests a positive correlation between teacher training and positive attitudes towards inclusion. [p9]
- Though financial resources matter, implementing inclusive education requires teachers and other educational professionals to regularly engage in collaborative problem solving. Research suggests that through the development of a culture of collaborative problem solving, the inclusion of students with disabilities can serve as a catalyst for school-wide improvement and yield benefits for non-disabled students. [p10]

A comprehensive meta analysis published in 2017 and covering a total sample of almost 4,800,000 students also found that educating students with disability in general education settings alongside non-disabled peers has no detrimental impact, and some positive impact, on the academic performance of non-disabled students¹⁶.

Last month the European Commissioner on Human Rights argued that the segregation of students with disability - in special schools, support units or quarantined to the corner of mainstream classrooms – compromises the performance of the general education system:

¹⁶ Academic achievement of students without special educational needs in inclusive classrooms: A meta-analysis", Grzegorz Szumski, Joanna Smogorzewska, Maciej Karwowski in Educational Research Review 21 (2017) 33e54

“Available studies indicate that school segregation has negative implications not only for minority or vulnerable students themselves but also jeopardises the overall performance of education. Tackling school segregation is not only necessary to safeguard the right to education and equality in the education systems, but also key to improving the effectiveness and performance of the education system as a whole. ... The countries with the highest index of social inclusion in schools ... are also the ones that performed best in the mathematics test in the PISA 2012 survey. These results are attributed to the ‘peer effect’, namely the positive outcome derived from the fact that students with learning difficulties benefit from sharing the educational space with their more advantaged peers. ... Conversely, a high concentration of students with learning difficulties in the same [segregated] classroom lowers educational quality and the expectation of teachers regarding their pupils’ potential for progress.” [p13]

Conclusion

The Australian Government has a duty to ensure that laws, policy and funding progress the implementation of an inclusive education system and are not promoting or maintaining segregating educational practices that are discriminatory, exclusionary and not supported by evidence.

The rise in segregated education and home-schooling is an indictment on the current adequacy of our education system and the need for reform.