Inclusive School Practices Toolkit

Policy Framework around Students Living with Disability

This tool has been developed as part of the *Inclusive School Communities Project*, funded by the National Disability Insurance Agency. The project is led by JFA Purple Orange.

## Introduction

Inclusion at school is the foundation of inclusive, welcoming communities. International, national and state-based policies establish a framework for addressing rights-based issues such as people living with disability accessing and participating in education. These policies aim to ensure that people living with disability have the same rights to equality before the law as the rest of the community and to promote acceptance within the community that people living with disability have the same fundamental rights as the rest of the community.

It is essential to inclusion that school staff (including leaders, educators, teacher aides, office staff, and other site staff) understand the various policies and laws and meet their legal (and moral and social justice) obligations to students living with disability and their families.

This tool provides a brief overview of the following:

* United Nations Convention on the Rights of Persons with Disabilities
* National Disability Strategy
* Disability Discrimination Act
* Nationally Consistent Collection of Data on School Students with Disability
* Disability Standards for Education

Schools are encouraged to provide ‘Handout 1: Overview of Disability Rights and Inclusion Policies Relevant to Education’ to school staff and use this tool to support discussions about how these instruments are applied in practice at their school.

## Ideas

The Australian Professional Standards for Teachers, Standard 1.6 ‘Strategies to support full participation of students with disability’ requires educators to “Demonstrate broad knowledge and understanding of legislative requirements and teaching strategies that support participation and learning of students with disability” [[1]](#footnote-1). It is best practice to take a whole-school approach to professional learning about legislative obligations since this supports effective and consistent decision making[[2]](#footnote-2). School staff who understand the policy instruments and their legal obligations will be more willing and better equipped for supporting and teaching students who have additional learning needs.

Inclusive schools ensure their staff have the knowledge and skills to operate within the policy framework that applies to their role. School staff should be familiar with the policies discussed in this tool and should use them as a reference point. A solid understanding of these ensures that:

* Students living with disability can participate in teaching and learning without discrimination;
* Students living with disability can access the school curriculum and achieve educational outcomes in the same manner as students without disabilities;
* Decisions are made based on the prospective student’s ability to meet the essential requirements of the educational programme, determine what adjustments are required then determine if these adjustments are reasonable upon full consultation with all interested parties and experts.[[3]](#footnote-3)

Schools need to take all reasonable steps to prevent any staff member or its agents (volunteers, unpaid honorary positions, boards of directors, contractors and consultants) from discriminating against students or other staff regarding their disability. Examples of steps taken at new Steiner school (independent) in Western Australia are:

* Issue and distribute a disability discrimination policy and be proactive in implementing the policy;
* Establish fair and effective disability discrimination grievance procedures;
* Raise awareness of all employees;
* Train those responsible for dealing with complaints or enquiries (including managers and
* supervisors);
* Monitor the working and learning environment;
* Continuing education on disability discrimination.[[4]](#footnote-4)

**Handout 1: Overview of Disability Rights and Inclusion Policies Relevant to Education**

## International

## *United Nations Convention on the Rights of Persons with Disabilities[[5]](#footnote-5)*

There is national recognition, through the ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by Australia in July 2008, that all people living with disability have the right to an inclusive, quality education.

These rights are iterated in detail throughout Article 24 as follows:

1. *Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*
2. *Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*
3. *Reasonable accommodation of the individual’s requirements is provided;*
4. *Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*
5. *Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.[[6]](#footnote-6)*

General comment No. 4 of the UNCRPD provides further guidance on the right to inclusive education and notes that inclusive education is to be understood (among other things) as:

*A fundamental human right of all learners. Notably, education is the right of the individual learner, and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child.*

*The result of a process of continuing and pro-active commitment to eliminate the barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.[[7]](#footnote-7)*

The UNCRPD provides a legal basis for the moral and social justice imperative to include students living with disability and provide high quality inclusive education for all.

## National

## *National Disability Strategy[[8]](#footnote-8)*

The National Disability Strategy 2010-2020 (the Strategy) draws on findings of the consultation with people living with disability conducted in 2008 by the National People with Disabilities and Carers Council. The Strategy is a commitment from all levels of government to a vision for “an inclusive Australian society that enables people living with disability to fulfil their potential as equal citizens.”[[9]](#footnote-9) The Strategy is structured around six outcome areas, one of which relates to education:

*People with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs. People with disability have opportunities to continue learning throughout their lives.[[10]](#footnote-10)*

There are four policy directions included in the strategy that are aimed towards achieving this outcome. School staff require a broad understanding of the National Disability Strategy and the relevant policy directions.

## *Disability Discrimination Act[[11]](#footnote-11)*

“Disability discrimination occurs when a person is treated less favourably, or not given the same opportunities as others in a similar situation because of their disability.”[[12]](#footnote-12) The Disability Discrimination Act 1992 (DDA) makes it unlawful to discriminate against a person, in many areas of public life because of their disability. The definition of disability within the DDA is broad and includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities, physical, disfigurement and disease-causing organisms, such as the HIV virus[[13]](#footnote-13). The DDA covers disabilities that people have now, had in the past, may have in the future or which they are believed to have. The DDA makes it is unlawful to discriminate against people living with disability in education settings.

Discrimination may be either direct or indirect and does not have to be intentional to be unlawful. Direct discrimination occurs when someone treats a person worse than another person in a similar situation because of disability. Refusing to consider or process an enrolment application from a student living with a disability to attend a school because of that disability is an example of direct discrimination. Indirect discrimination occurs when a person living with disability is required to comply with a requirement or condition that:

* those without a disability would be able to comply
* it is not reasonable for the person to have to comply given the circumstances of the case
* the person cannot comply[[14]](#footnote-14)

In some cases, it is not considered unlawful to discriminate against a student living with disability. For example, if ‘unjustifiable hardship’ can be shown. Whilst the DDA requires a school to consider all requests to meet a student or prospective student’s needs, it does not require a school to accommodate a student or prospective student where to do so would require more than reasonable adjustment and cause unjustifiable hardship to the school[[15]](#footnote-15). Schools must understand the concepts of ‘on the same basis’ and ‘reasonable adjustments’ before claiming ‘unjustifiable hardship’.

***Nationally Consistent Collection of Data[[16]](#footnote-16)***

The Nationally Consistent Collection of Data on School Students with Disability (NCCD) gives information about the number of students with disability in schools and the adjustments they receive. It helps better understand the needs of students with disability and how they can be best supported at school. The Australian Education Regulation 2013 requires all schools to report the data collected for the NCCD to the Australian Government on an annual basis. From 2018, the student with disability loading provided by the Australian Government is based on the NCCD; schools will continue to manage their total resources to meet the learning needs of their students. The NCCD website is continually being updated and added to with various resources and tools to implement the NCCD model <https://www.nccd.edu.au/>

## State

***Disability Standards for Education[[17]](#footnote-17)***

The Disability Standards for Education (the Standards) were introduced in 2005. The Standards reflect the Government’s commitment to overcoming discrimination towards people living with disability. They were designed to promote the rights of students living with disability and to provide education providers with a clearer guide on meeting their obligations under the DDA. Further, the Standards were intended to foster community awareness of the numerous barriers faced by people living with disability when interacting with the education system.

The Standards describe the rights of students living with disability with reference to:

* Enrolment
* Participation
* Curriculum development, accreditation and delivery
* Student support services
* Elimination of harassment and victimisation

Students living with disability also have rights in relation to specialised services needed for them to participate in the educational activities for which they are enrolled.

The Standards require that all Australian schools:

* ensure that students with disability are able to access and participate in education on the same basis as students without disability
* make or provide 'reasonable adjustments' for students where necessary to enable their access and participation
* provide reasonable adjustments in consultation with the student and/or their associates; for most students, this means their parents, guardians or carers[[18]](#footnote-18).

## Actions

School staff are required to understand each of the policies outlined in ‘Handout 1: Overview of Disability Rights and Inclusion Policies Relevant to Education’ of this tool. It is useful to discuss each instrument with staff to help inform their thinking about inclusive school practices. This tool may be used in individual (e.g., staff supervision/professional development meetings) or group settings (e.g., staff meeting) however a capable facilitator is required to create an environment in which participants feel safe to actively participate in open discussion about these policies. It can be used as the basis for an exploration with staff (and students and families) about what could be changed to make their school more inclusive.

An open discussion about these instruments at a staff meeting may be facilitated using these example questions, some of which are inspired by the NCCD’s key questions for reflection[[19]](#footnote-19):

1. Why do you need to know about the policy framework applying to students living with disability?
2. What do you already know and understand about… and how do these relate to your everyday practices (as an educator, teacher aide, counsellor, office staff, etc.) in your school?
3. United Nations Convention on the Rights of Persons with Disabilities
4. National Disability Strategy
5. Disability Discrimination Act
6. Nationally Consistent Collection of Data
7. Disability Standards for Education
8. What school policies and procedures are related to these instruments?
9. What can the school team do to build understanding and knowledge of these within the school?
10. What do you understand about the concepts of ‘on the same basis’ and ‘reasonable adjustments’?
11. What steps are taken at your school to prevent discrimination against students or other staff regarding their disability?
12. Does the school team need to access additional professional learning or support materials to further develop its (or the whole school’s) understanding?
13. What ‘good practices’ have the school team seen from other staff or other schools that could be adopted in the future?
14. How can the school team regularly review effective teaching and learning practices to ensure that all students who require additional support are provided with the adjustments and supports they need?

The above questions can be used in conjunction with the NCCD’s Reflection Tool. This was developed for school teams to reflect on their practices and processes for supporting students with disability and how improvements in these practices will facilitate the completion of the NCCD <https://www.nccd.edu.au/sites/default/files/2018-10/NCCD%20Reflection%20Tool.pdf>

Following the suggested reflection and discussion, the school team may need to provide or broker professional learning where gaps in knowledge and capacity of staff are identified. Sound knowledge and understanding of school obligations under the DDA and the Standards will assist schools in understanding and implementing the NCCD. It is strongly recommended that all school staff undertake professional learning about the legislation prior to completing the NCCD. Professional learning on the Standards (e-learning) is available through the NCCD website <https://www.nccd.edu.au/resources-and-tools/professional-learning/format/e-learning-5>

Horizon Christian School is a Foundation to Year 12, co-educational Christian School situated in the rural township of Balaklava, South Australia. The school team designed an hour-long professional learning session on the NCCD (and the DDA and the Standards) that is delivered to staff annually at the start of each year. This ensures their staff understand and meet their legislative obligations and are equipped for inclusive school practices. The PowerPoint presentation may be used/reproduced with recognition to Horizon Christian School.

## More Information

Fact sheet on the DDA produced by the Department of Education and Training <https://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-1-dda_0.pdf>

Fact sheet on disability discrimination produced by the Australian Human Rights Commission <https://www.humanrights.gov.au/sites/default/files/GPGB_disability_discrimination.pdf>

Fact sheet on the DSE produced by the Department of Education and Training <https://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-1-dda_0.pdf>

Full copy of the National Disability Strategy 2010-2020 produced by Department of Social Services <https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf>

Helen River Steiner School’s Disability and Enrolment Policy https://www.hrss.wa.edu.au/wp-content/uploads/2019/03/hr\_disability\_and\_enrolment\_policy.pdf

The NCCD and supporting students living with disability <https://www.nccd.edu.au/>

**Acknowledgement**

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1. Australian Institute for Teaching and School Leadership (2011). Australian professional standards for teachers. Retrieved from <https://www.aitsl.edu.au/docs/default-source/apst-resources/australian_professional_standard_for_teachers_final.pdf> [↑](#footnote-ref-1)
2. NCCD (2019). What are my school’s obligations under the legislation? Retrieved from <https://www.nccd.edu.au/wider-support-materials/what-are-my-schools-obligations-under-legislation?parent=%2Funderstanding-nccd&activity=%2Fwider-support-materials%2Fwhat-nccd&step=1> [↑](#footnote-ref-2)
3. Helen River Steiner School (2018). Disability and Enrolment Policy. Retrieved from https://www.hrss.wa.edu.au/wp-content/uploads/2019/03/hr\_disability\_and\_enrolment\_policy.pdf [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. UN General Assembly (2006). Convention on the Rights of Persons with Disabilities and Optional Protocol. Retrieved from https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. UN General Assembly (2016). General Comment 4: Article 24: Right to Inclusive Education. Retrieved from https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRPD\_General\_Comment\_4\_Inclusive\_Education\_2016\_En.pdf [↑](#footnote-ref-7)
8. Australian Government Department of Social Services (2011). National Disability Strategy 2010-2020. Retrieved from https://www.dss.gov.au/sites/default/files/documents/05\_2012/national\_disability\_strategy\_2010\_2020.pdf [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Australian Government (1992). Disability Discrimination Act 1992. Retrieved from https://www.legislation.gov.au/details/c2013c00022 [↑](#footnote-ref-11)
12. Australian Human Rights Commission (2015). Disability Discrimination. Retrieved from <https://www.humanrights.gov.au/our-work/employers/disability-discrimination> [↑](#footnote-ref-12)
13. Australian Government Department of Education and Training (no date). Disability Discrimination Act 1992. Retrieved from <https://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-1-dda_0.pdf> [↑](#footnote-ref-13)
14. Helen River Steiner School (2018). Disability and Enrolment Policy. Retrieved from https://www.hrss.wa.edu.au/wp-content/uploads/2019/03/hr\_disability\_and\_enrolment\_policy.pdf [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. NCCD (2019). Retrieved from https://www.nccd.edu.au/ [↑](#footnote-ref-16)
17. Australian Government Department of Education (2005). Disability Standards for Education. Retrieved from https://education.gov.au/disability-standards-education [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. NCCD (2019). Consider key questions for reflection. Retrieved from https://www.nccd.edu.au/wider-support-materials/consider-key-questions-reflection [↑](#footnote-ref-19)