



Independent Schools  
Council of Australia

**2015 Review of the Disability Standards for Education 2005  
Submission by  
The Independent Schools Council of Australia (ISCA)**

**Introduction: About ISCA**

ISCA is the peak national body representing the Independent schooling sector. It comprises the eight state and territory Associations of Independent Schools (AISs). Through these Associations, ISCA represents a sector with 1,080 schools and 576,000 students, accounting for approximately 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of Independent schools to the attention of the Australian Government and to represent the sector on national issues.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many Independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education.

Independent schools include:

- Schools affiliated with larger and smaller Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools;
- Non-denominational Christian schools;
- Islamic schools;
- Jewish schools;
- Montessori schools;
- Rudolf Steiner schools;
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states;
- Community schools;
- Indigenous community schools;
- Schools that specialise in meeting the needs of students with disabilities;
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.

Many Independent schools have been established by community groups seeking to meet particular needs. Examples include the Independent community schools for Indigenous students in remote areas, special schools for students with disabilities and boarding schools to educate children from rural and remote areas. There are also schools that seek to reflect the religious values of a particular community or that seek to practice an internationally recognised educational philosophy such as Rudolf Steiner or Montessori schools. Independent Catholic



schools are a significant part of the sector, accounting for eight per cent of the Independent sector's enrolments.

Most Independent schools are set up and governed independently on an individual school basis. However, some Independent schools with common aims and educational philosophies are governed and administered as systems, for example Lutheran systems. Systemic schools account for 18 per cent of schools in the Independent sector. Four out of five schools in the sector are autonomous non-systemic schools.

## Key points

- From the perspective of the Independent sector, the introduction of the Standards was a significant and positive move forward in supporting the provision of education for students with disability.
- The role of the Independent school sector in providing for students with disabilities has increased significantly in recent years. The growth in enrolments of students with disabilities in Independent schools has been greatest in mainstream schools.
- The Standards have provided a common framework of language and process that assist schools to be compliant with the *Disability Discrimination Act 1992*.
- Further development of the Standards to achieve greater clarity of terminology, obligations, expectations and processes would significantly assist schools to understand their obligations under the *Disability Discrimination Act 1992*.
- The impact of the *Disability Discrimination Act 1992* and associated Standards requires schools to accept enrolments of all students irrespective of the nature of their disability but without commensurate government funding to support them.
- Students with disability enrolled in Independent schools do not receive the same level of additional funding as their counterparts in government schools. Lack of adequate government support for students with disabilities in Independent schools is a major constraint for schools.
- It is essential that governments provide adequate funding support to all students with disabilities, regardless of the type of school they attend, to enable schools to better meet their obligations to students with disabilities.
- Training for educators in special or inclusive education at pre-service and post-graduate levels is critical with regard to the interpretation of the *Disability Discrimination Act 1992* and the Standards.
- All educational providers and students with disabilities require ongoing professional learning opportunities that will enable them to maintain their legislative obligations outlined in the Standards.

## ***Introduction***

The Independent Schools Council of Australia (ISCA) is pleased to have the opportunity to make this submission in response to the 2015 Review of Disability Standards for Education 2005. This submission addresses a range of issues directly related to the Review's Terms of Reference and key Discussion Questions, as well as other issues related to the provision of education for students with disability that are of particular concern to the Independent schools sector.

ISCA and the eight State and Territory Associations of Independent Schools (AISs) are not, strictly speaking, 'education providers' as defined by the institutions and organisations described in the Standards. Unlike other sectors, the majority of Independent schools operate autonomously. While almost all Independent schools choose to become members of their state or territory AIS, the AIS does not act as a 'system authority' for the sector.

As the Independent sector is not a system and therefore cannot develop systemic policies the introduction of the Standards was significant in setting a clear direction for students with disabilities, their associates and for schools within the sector. **The Standards have provided a much needed process and consistent language to enable schools to be compliant with the legislation and for state AISs to support schools in the implementation of this process.**

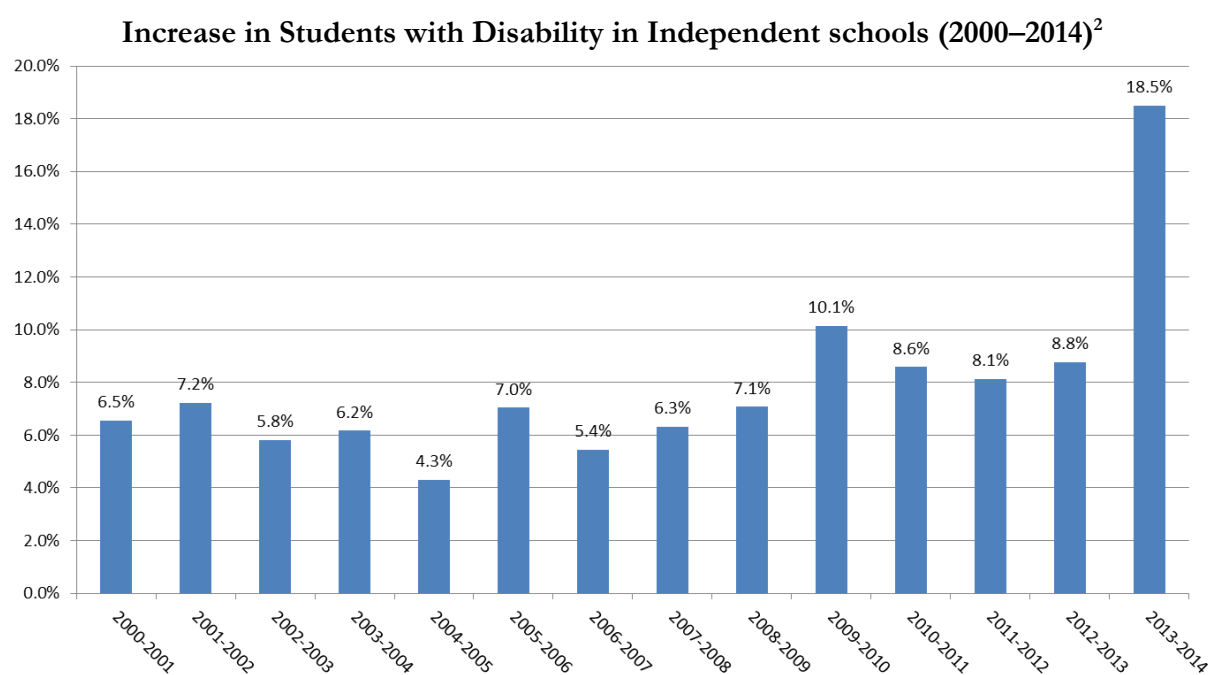
## ***Access and Participation***

1. The *Disability Discrimination Act 1992* and its associated Disability Standards for Education 2005, in addition to state and territory-based legislation, oversee the obligations on all schools to enrol and educate students with disability
2. Parents have the right to select a school of their choice. Schools must consider the enrolment application on the same basis as applications for other students regardless of the level of supplementary assistance that may be available, unless they can categorically prove undue hardship due to the enrolment of a student with a disability.
3. **The role of the Independent school sector in providing for students with disability has increased dramatically in recent years.** The number of students with disability in Independent schools is significant and continues to increase annually. In particular, over the last 15 years there has been a consistent and steady trend of increasing enrolments of students with disability in Independent schools. In 2014, over 18,000 students with disability were enrolled in Independent schools. This is almost three times the number of students with disability who were enrolled in Independent schools in 1999.
4. **The growth in enrolments of students with disabilities has been greatest in mainstream schools**, which now account for some 82 per cent of students with disability in Independent schools, including those with high to very high support needs. Around 18 per cent of students are enrolled in special schools which provide alternative educational settings for students with high-level needs.<sup>1</sup>

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<sup>1</sup> Department of Education & Training *Non-Government School Census 2015* – includes Independent Catholic enrolments

5. Factors influencing the increased enrolments include:
  - The changing trend, evident in all sectors, of students with disabilities being educated in mainstream schools.
  - The *Disability Discrimination Act 1992* formalised the principle of parental choice as to where their child would be educated.
  - The recognition that students with disabilities be offered the same educational opportunities as other students.
  - Significant growth in the number of students enrolled in Independent special schools due to the number of such schools opening in the last 20 years. During this time more than 30 new Independent special schools or campuses of existing schools opened. In 2014 there were 82 Independent special schools across Australia.



6. While the Standards provide a framework to ensure that students with disability are able to access and participate in education on the same basis as other students, other factors beyond the influence of the Standards may mean that students from regional, rural or remote areas, from culturally and linguistically diverse backgrounds, or who are Aboriginal or Torres Strait Islander still experience barriers to access and full participation.

7. **There is a clear lack of specialist trained teaching staff and allied health professionals** in rural and remote areas. Families are often required to travel extensive distances to access appropriate support. This inhibits families from obtaining much needed professional opinion, diagnosis and access to services. Parents of students in low socio economic areas often experience similar difficulties as those families in rural and remote areas, having limited access to allied health professionals due to extensive waiting lists in many government agencies.

8. Students requiring mental health services are not always able to access counselling and child and adolescent mental health support services, particularly those within smaller

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<sup>2</sup> Department of Education & Training *Non-Government School Census 2015* - excludes Independent Catholic enrolments

Independent schools, and are again reliant on government agencies with extensive waiting lists or on private services to provide the necessary support to the student, family and the school.

### ***Knowledge and Awareness***

1. The development, introduction and implementation of the Standards was a significant move forward in supporting the provision of education for students with disability.
2. **Educators in Independent schools**, along with those in the Catholic and government sectors, **are highly aware of the barriers that may exist** to appropriately meet the needs of students with disability. In many cases schools and individual educators are the closest non-family support to students with disability, their parents and associates.
3. The knowledge and awareness of schools, teachers and others in the educational community has been heightened in recent years by the inclusion of the references to the Standards in documents relating to the Australian Curriculum, the activities funded under More Support for Students with Disabilities, and the Nationally Consistent Collection of Data.
4. **For many years AISs have been providing information and support, professional learning, and special education services to Independent schools enrolling students with disability.** Many AISs have implemented specific programs which are aimed at assisting classroom teachers to identify student need and then identify strategies and adjustments that teachers can implement to assist students with disability, in order to reduce the barriers to accessing education faced by students with disability.
5. These services may include working collaboratively with school principals, classroom teachers, administration staff, students with a disability, their families and associates to collectively implement the individual planning process for each student. The individual planning process identifies the student's needs and outline adjustments and procedures for implementing appropriate strategies to maximise student access, participation and the provision of support services.
6. Some AISs may engage consultants who support schools in determining needs in terms of adjustments to school facilities and the equipment and resources required for individual students. These consultants are educators with postgraduate qualifications in special education and vast experience in both management and teaching in the area of supporting schools enrolling students with disabilities. This level of expertise and experience is necessary to assist schools to appropriately support students and adequately interpret their obligations outlined under the Standards. However, due to the cessation of the Australian Government Targeted Programs, the provision of these services have decreased and/or the costs have been passed on to individual schools.
7. Specific support may be required in order to work through the consultation process to identify a reasonable adjustment and also to assist schools in the determination of mechanisms that are appropriate to the particular individual and school context to implement that adjustment. Adjustments must be considered at 'point in time'; within a specific context and based on the individual student. It is at this time that schools gain the greatest knowledge regarding the implementation of the Standards.

8. One of the most important features of the Standards is that they have provided a common framework of language and processes that addressed the broad awareness within the education community of the barriers faced by students with disability. In doing so, the Standards provided a structure and a practice that would enable schools to be compliant with the *Disability Discrimination Act 1992*.

9. The introduction and implementation of the Standards thus created a virtuous circle that in addressing the awareness of educators that existed prior to the Standards also continued to raise awareness of the barriers faced by students with disability.

10. Some AISs have noticed that the development and staged implementation of the Nationally Consistent Collection of Data on School Students with Disability (NCCD) has had an impact on a range of people accessing information about the Standards. Prior to the NCCD, consideration of the Standards and its implications may often have been left to staff members who coordinated and/or worked in the area of individual student learning needs. Since the arrival of the NCCD, there has been a much stronger focus in schools on ensuring that all staff – principals, administration and support staff, and all teachers - are aware of their obligations. This development has been welcomed by AISs and is seen as a significant step forward.

11. Independent schools strongly welcomed the quality professional learning provided by AISs to support schools' understanding of the *Disability Discrimination Act 1992* and their obligations under the Act. In recent years, Independent schools in Victoria and Tasmania were included by state governments in cross sectoral access to online professional learning modules developed by the University of Canberra. However, most Independent schools in other states and territories were unable to provide input to the quality or use these resources due to the prohibitive expense placed by the University of Canberra to purchase licenses.

12. **While the Standards have provided a common language with which to discuss the provision of education for students with disabilities, it is also the case that certain terminology has, in practice, raised further issues that need to be addressed.** These important issues will be further addressed below.

### *Understanding and Advocacy*

1. Each area of the Standards includes a statement of the rights and entitlements of students with disability in relation to education. While the statement of rights is intended to make clear the rights of students with disability and the obligations of education providers, **the broad and general nature of the Standards do not, in practice, provide the 'everyday' detail that schools may find is required** to successfully and effectively implement and embed the Standards in a holistic and manageable way.

2. The Standards outline significant obligations of providers which have implications for those providers in general and specific implications for providers in the Independent sector. In various places the Standards lack the required clarity to ensure that all providers clearly understand their obligations under the Standards.

3. **While the Standards have assisted schools, in that they make clear what obligations the providers have with regard to students with disabilities and their associates, it is also the case that various complicated issues have arisen during the implementation of the Standards.**

4. The general nature of the Standards provide a degree of flexibility within which to meet the needs of students but **the lack of specificity also creates an ‘open-ended’ situation that leaves the Standards open to interpretation.**

5. **The Standards have provided a common language with which to discuss the provision of education for students with disabilities,** but it is also the case that **certain terminology has, in practice, raised further issues that need to be addressed.**

6. Further clarification is required around some terminology used within the Standards such as, *‘on the same basis’*, *‘reasonable adjustments’*, *‘imputed disability’*, *‘the inherent requirements of the course’*. The clear and consistent understanding of these terms is critical to the effective implementation of the intent of the Standards, since currently each of these terms is open to a varying array of interpretations. **The variety of interpretation may lead to the intent of the Standards not being effectively met in practice.**

7. Importantly the core concept of *‘unjustifiable hardship’* also requires further clarification. Schools in the Independent sector have advised that in their experience, parental opinion and professional opinion of what constitutes *‘unjustifiable hardship’* can often vary markedly. There is in general, a lack of understanding that *‘unjustifiable hardship’* refers to more than only unjustifiable financial hardship. In addition there is confusion that the Standards require consideration of the financial resources available to the educational authority and not limited to those resources quarantined to support students with disability. Legal advice is typically required should schools wish to appeal for a case of *‘unjustifiable hardship’*. Clearer guidance around the use of this term is required in the Standards.

8. **A more complete and comprehensive understanding of the terminology used within the Standards can be gained through reference to the Guidance Notes.** For example, the Guidance Notes provide a more extensive overview of the concept of *‘reasonable adjustments’* than the Standards. This can be problematic as the Standards are often read in isolation of the Guidance Notes and thus important elements to provide clarity are missed.

9. **The measures for compliance have, in many cases, been the most useful aspect of the Standards for providers and have been essential to demonstrate to schools their obligations towards students with disability.** However, the measures of compliance relating to the Standard for curriculum development, accreditation and delivery lack clarity such that it is very difficult to determine the obligations of the provider under this Standard.

10. The objective of the Standards in relation to some specialist facilities run by providers, such as boarding accommodation also appears to be unclear. A boarding facility run by a school may be required to provide constant 24 hour care to a student with disability. The Standards currently lack clarity as to whether this kind of situation may be considered a *‘reasonable adjustment’*.

11. Further clarification is required relating to the obligations entailed by the Standard for student support services as this Standard often involves a considerable degree of judgement. **The area of student support services is one in which there is often a divergence between users and providers in the interpretation of obligations.**

12. **Greater clarity could be facilitated by the provision of case studies from conciliations and case law.** Case examples of imputed disabilities, disabilities that previously

existed, and disabilities that will exist in the future would be extremely beneficial. This information may be contained within a Standards support document that is regularly updated.

13. The sustainability of knowledge for education authorities is a major difficulty for schools in meeting their obligations under the Standards. The traction of education in this area is limited due to the complex and mobile nature of the educational environment. **It is imperative that improved, targeted, ongoing professional learning is undertaken by all teachers in order to ensure that they are well equipped to respond to the full range of students needs to appropriately implement the Standards.**

14. **The Standards present the obligations of the education provider; however there is no guidance within the Standards on the expectations of students with disability and their associates.** Arranging the Standards to outline both the obligations and the responsibilities of both the provider and the user, as expected for all families enrolled in schools, would assist to further clarify the process for both providers and users.

### ***Non-discrimination in Education***

1. The *Disability Discrimination Act 1992* and associated Standards requires schools to accept enrolments of all students irrespective of the nature of their disability. The overall costs to facilitate access to and participation in the education provided by the school as specified in the Standards, are often substantial. **The obligations** that have been outlined for providers to meet **have not been matched by commensurate and equitable funding** provisions to support students and providers in the Independent schools sector. **In Independent schools, these costs are borne directly by the parent body and school community.**

2. There is no argument about the willingness of Independent schools to meet their social and legal obligations to enrol students with disabilities. It should, however, be recognised that **enrolment of a student with disabilities may operate differently in an Independent school than an enrolment in a school that is part of a system.**

3. A perception exists within the broader community that Australia now has national school funding arrangement in which all schools are funded on the same basis according to need. While the recommendations from the *Final Review of Funding for Schooling* (better known as the Gonski Report) constituted a national school funding model, the funding arrangements being implemented from 2014 do not represent a national funding model.

4. **Students with disability enrolled in Independent schools do not receive the same level of additional funding as their counterparts in government schools.** Lack of adequate government support for students with disability in Independent schools is a major constraint for schools seeking to enrol these students. **The Independent sector believes that students with disability must be appropriately and equitably resourced by governments regardless of the type of school they attend.**

5. In theory, under the new Schooling Resource Standard (SRS) funding model, all students with disability are entitled to the same loading amount. However in reality, the new model does not achieve this, does not differentiate between levels of disability, and the transition arrangements are extremely complex. Due to transition arrangements **the majority of Independent schools are only receiving a small proportion of their additional funding entitlement** under the SRS model. **In addition,** since the demise of the Australian Government



Targeted Programs, **there is no capital funding** provided to assist with building works or equipment.

6. The **current funding arrangements do not cater for students with disability who enrol in an Independent school at the beginning of the school year.** The additional costs of these students are not factored into a school's funding entitlement until the end of the year, meaning that schools must carry the financial cost of these students for a full year. Even once factored in, schools 'below the model' will only receive a portion of the additional funding for a student with disability, rather than the entire loading, during the transition period.

7. While the transition is in place across all sectors, in the government and Catholic sectors, systemic allocative mechanisms mean that funding can be targeted at students anywhere in the system. This is not the case in Independent schools where government funding is provided directly to the individual school. **This inequity is of considerable concern to the Independent school sector.**

8. Education providers operating within a system that enrolls students with disability, as they are but one part of a systemic structure, have the opportunity to investigate and provide a reasonable alternative educational location in another part of that system. Schools systems are able to benefit from efficiencies of scale and have the capacity to move funds across education providers in order to appropriately support students with disability. Independent schools, as they are governed independently on an individual school basis, have no such opportunity. This issue is referred to in the Guidance Notes but not in the Standards themselves.

9. The circumstances of special schools and special assistance schools under the new funding arrangements should also be highlighted. Special schools and special assistance schools are an important and long-standing part of the Independent sector, offering parents and students increased educational choice by providing an alternative to mainstream schooling. Special schools cater primarily for students with disability and provide special programs and innovations which meet the specific educational requirements of high-need students. Generally, special assistance schools provide an alternative and supportive school environment for students with particular social, emotional or behavioural difficulties. Many such students are unable to cope with or have been formally excluded from mainstream education in both the government and non-government sectors.

10. **The *Final Report of the Review of Funding for Schooling* recommended that the recurrent costs of special schools and special assistance schools be fully publicly funded by governments.** Despite the rhetoric of governments regarding support for students with disability, this recommendation was not implemented and **the new funding arrangements from 2014 do not provide adequate support to these schools** which means they will continue to struggle to meet the ongoing educational needs of their students.

### ***Future Improvements***

1. **Training in special or inclusive education at pre-service and postgraduate levels is critical** with regard to the interpretation of the *Disability Discrimination Act 1992* and the Standards. Currently there appears to be limited pre-service training to prepare generalist classroom and subject teachers for educating students with disability. This situation is compounded by a lack of available, appropriately qualified post-graduate special education teachers to provide advice and support in the legislated individual planning process.

2. **The clear lack of specialist trained teaching staff and allied health professionals in rural and remote areas was highlighted above. Even in metropolitan areas** where the lack of specialist trained teaching staff and allied health professionals is not as severe as regional areas, **there still remains limited access to trained staff.** In addition, the high cost of accessing allied health professionals is a barrier to many families, particularly given the limited funding available to schools.
3. This support often requires staff from schools to be released to travel to and attend meetings with specialist staff. The reality of this situation makes it very difficult at times for schools to meet their obligations stated in Standards around the provision of support services.
4. **Further development of the Standards to achieve greater clarity of terminology, obligations, expectations and process would significantly assist schools** to understand their obligations under the Act, lessen the impact of divergent interpretations by different parties, and ultimately provide better support for students with disability.
5. This development may include the addition of current case law, case studies and exemplars, written in user friendly language, to support educators and schools make informed decisions.
6. As indicated above, a more comprehensive understanding and application of the Standards is made through reference to the Guidance Notes that accompany the Standard. However, this can be problematic as the Guidance Notes are not a legal document and the Standards are often read in isolation of the Guidance Notes. In order to avoid confusion and to support schools in the best possible manner, **the Standards and critical elements of the Guidance Notes should be merged in to one comprehensive legal document.**
7. As ongoing learning is required to support the interpretation and implementation of the Standards, **professional learning developed to support schools' understanding of the *Disability Discrimination Act 1992* and their obligations under the Act should be funded by the Australian Government to all schools,** across sectors in all states and territories.

## ***Conclusion***

The Independent Schools Council of Australia is pleased to have this opportunity to make a submission in response to the 2015 Review of Disability Standards for Education 2005.

The development, introduction and implementation of the Standards was a significant move forward in supporting the provision of education for students with disability.

There is no shortage of students with a disability seeking to attend Independent schools and the continuing, long standing trend of growth of enrolments in Independent schools demonstrates the commitment of Independent schools to meet the educational needs, choices and aspirations of students with disability and their families.

Further development of the Standards to achieve greater clarity of terminology, obligations, expectations and processes would significantly assist schools to understand their obligations under the *Disability Discrimination Act 1992*.

The introduction of the Standards has been a significant first step in endeavouring to ensure the rights and responsibilities in education and training are understood and effectively applied.

In order to support the needs and choices of students with disability and their families, and enable schools to continue to meet their obligations under the Standards, governments should provide funding to meet the educational needs of all students with disability because of the nature of their disability, no matter which school they choose to attend.

The Independent schools sector looks forward to continuing to work with students and their associates, education providers, and governments to ensure that students with disability are able to access and participate in education on the same basis as other students.



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12 June 2015