Submission
No 152

# INQUIRY INTO STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS

**Organisation**: Ms Carol Barnes

**Date received**: 25 February 2017

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# Submission

to the

# New South Wales Legislative Council

# Inquiry into

# Students with a disability or special needs in New South Wales schools

**Prepared by Carol Barnes**

**25 February 2017**

## Summary:

This experiential submission focusses on students with **disability** who are also **gifted** (IQ in top 10% of age peers). It describes the barriers encountered by such students and by their parents, with particular emphasis on how little is known by education providers about their obligations under disability discrimination **legislation** (in particular the *Disability Standards for Education 2005*), and consequently how impossibly difficult it is for some gifted students with disability to obtain approval for **disability adjustments**, both for classroom activities and assessments and for high-stakes State tests and exams such as NAPLAN and the NSW HSC final exams. It includes **recommendations** for possible solutions to the problems described in the submission. **Examples** in support of the assertions in the submission are listed in Appendices.

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# 1. Background

This submission is made in response to the call for submissions by the New South Wales Legislative Council in the context of its committee's Inquiry into the provision of education to students with a disability or special needs in government and non-government schools in New South Wales: https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2416 (‘**Inquiry**’).
I congratulate the committee on its initiative in soliciting the views of members of the New South Wales community who have some form of lived experience of disability in the education context.

I am an Honorary Visiting Fellow at the **School of Education** at the **University of New South Wales**, but I make this submission in my ***personal capacity***, and I note that it has not been endorsed by, and does not necessarily reflect the views of, UNSW.

I am also national coordinator of **GLD Australia**, a national online learning community and support group responding to the needs of gifted children and gifted adults with specific learning disability and other learning challenges (‘**GLD**’), and the needs of those who teach, care for, or advocate for them, through the sharing of information, research and personal experiences.

GLD Australia is a not-for-profit independent learning community with a member-owned and member-operated Yahoo Group list. It is affiliated with the Australian Association for the Education of the Gifted and Talented http://www.aaegt.net.au, which is the Australian national umbrella association for State and Territory gifted associations.

GLD Australia has approximately 270 members across Australia. It has no political affiliations, is not an incorporated association, and thus has no income, membership fees, property, officers, employees or premises. Run entirely by non-paid volunteers, it does not offer any tutoring or exam preparation courses or other commercial services.

Since GLD Australia is not a legal entity, I make this submission in my ***personal capacity***, as a volunteer parent advocate who has been working with parents of gifted children with disability for over 10 years.

In the course of my volunteer work for GLD Australia and for a variety of other gifted and learning disabilities associations and groups, I have over the last decade spoken to, and communicated via email with, many hundreds of parents whose gifted children with disability are not having their needs met at school, and in particular NSW parents who have encountered problems:

- when applying to the NSW Education Standards Authority (‘**NESA’**) [formerly BOSTES] for disability adjustments for their children’s Higher School Certificate (‘**HSC**’) final exams, or

- when appealing to the Australian Curriculum, Reporting and Assessment Authority (‘**ACARA**’) to reverse NESA’s decisions to refuse disability adjustments for NAPLAN.

I include the biographical information above to explain the genesis of my familiarity with this population – not as an assertion that my views reflect those of all members of GLD Australia or of any of the other voluntary associations with whom I work, or that I in any way have authority to speak on their behalf.

I note also that I do not run a business or sell any publications or products. I do not accept fees from parents for advocating for their children, and I do not accept fees for lecturing at universities, for providing in-service professional development or training to teachers in schools, or for speaking at conferences, even when I am an invited speaker.

Though I am a retired lawyer, I do not ‘act for’ parents in my capacity as such. Rather I support parents in my capacity as volunteer support person, notetaker or advocate only (though I always disclose the fact of my legal qualifications when I accompany a parent to a Human Rights Commission (‘**HRC**’) conciliation conference).

I acknowledge the proviso on the Inquiry’s website:

> ***Please note that this inquiry cannot influence the outcome of any individual matter under investigation***

and for the avoidance of doubt, I record here that I do not myself have a child in a NSW school who is affected by any of the issues addressed in this submission.

Accordingly, this submission does not in any way stem from self-interest or from any current dispute.

Both my children with disability were removed from NSW in early high school, and continued their education at boarding schools in another Australian jurisdiction which does not have HSC-type Year 12 final exams. My husband and I made this decision partially to avoid our children ever having to go through the HSC final exam system. One child completed Year 12 under the senior assessment system of that jurisdiction, and the other child under the International Baccalaureate system. Both have now completed their first university degree (one with the university medal in a professional degree) and one is currently undertaking post-graduate work.

**Accordingly, I personally have not been adversely affected by the NSW HSC exam system or by any decision of the NSW Department of Education and Communities ('DEC') or of NESA.**

**Instead, I make this submission on behalf of those children, parents and teachers who have.**

The submission is based on my experience in volunteering in this field since around 2005 and on the experiences of many hundreds of parents, teachers and other professionals, as reported to me.

**Confidentiality:**

This is **NOT** a **confidential** submission, and I expressly grant permission for it to be published on the Inquiry's website and/or circulated to anyone who the Inquiry believes might wish to see it. Similarly, I record here that I will be sharing it with the members of GLD Australia and with a variety of other parents, teachers, academics, government officials and disabilities associations who have reason to be interested in its contents and recommendations.

## 2. Scope of this submission

I refer to the Inquiry's Terms of Reference

https://www.parliament.nsw.gov.au/committees/DBAssets/Inquiry/TOR/2416/TOR%20students%20with%20disability%20or%20special%20needs%20in%20NSW%20schools.pdf

and note that this submission will focus on the issues canvassed in paragraphs (b), (c) and (d) thereof.

Some of the examples listed in the submission's Appendices address the issue raised in paragraph (a) with respect to rural and regional areas, but only in a peripheral way.

While the submission concentrates on **gifted** children with disability, the vast majority of the arguments presented apply equally to **all** school children with disability.

# 3. Context of this submission

The gifted children of the parents who contact GLD Australia are generally extremely behaviourally compliant. In the early years, many present as ‘average’. As non-squeaky wheels, they attract little attention – **until they begin to fail at school**.

Often this occurs in late primary or early secondary school when academic work demands more hours of sustained effort, and when students are presented with ever increasing organisational and time management challenges.

It is generally at this point that a gifted child’s invisible disability is first identified, and parents begin to take action to ensure that the disability is being appropriately addressed and supported at school.

It is usually at this point also that parents begin to encounter obstacles, initially with respect to having their children’s needs met in the classroom, and later in the context of applying to NESA for disability adjustments for NAPLAN and for the HSC final exams**.**

Depending on the nature of the professionally diagnosed and documented disability, and the level of impairment occasioned by it, such professionally recommended disability adjustments for exams might include: rest breaks, extra time to read and/or write, access to a scribe, permission to type long prose answers on a computer without spellcheck, large print, dimmed lighting, separate supervision, preferential seating or flexible exam scheduling.

I find myself day after day making the same points and providing the same explanations – different school, different child, different disabilities but same arguments.

The vast majority of parents who contact me present with fact situations which in my view could justify filing a complaint with the HRC pursuant to federal disability discrimination legislation – indeed I have seen many less worthy cases proceed to conciliation and eventually succeed.

Yet I am usually reluctant to advise that parents take that last-resort action as it is stressful for the parents, and time-consuming and thus costly for the staff of the HRC and for the staff of schools, DEC and NESA.

When I do decide to support (in my capacity as parent advocate, not as lawyer) a parent who sees no alternative but to file a complaint with the HRC, that parent’s complaint is almost always eventually resolved in favour of the child – no matter how many rejections their applications may have previously received.

I have prepared this submission hoping that a solution may be found which will result in parent advocates spending far less time interceding on behalf of parents in this way – a solution whereby:

- all students with medically verified and documented disability can, without filing a HRC complaint, have access to professionally recommended disability adjustments for their everyday schoolwork, for NAPLAN and for the HSC final exams when appropriate, and

- all parents will have the knowledge which they need to apply for the adjustments, not merely those parents who happen to belong to a support group such as GLD Australia.

# 4. The Issues:

## 4.1 Lack of familiarity with legislation and policies

Schools and teachers rarely know enough (or anything at all…) about federal or state disability discrimination legislation or about their responsibilities and obligations with respect to implementing disability adjustments for students with disability in the classroom and for tests and exams
Too many schools in all three sectors (public, Catholic and independent) are still initially alleging to parents, and to me as the parent's advocate, that they have never heard of any kind of disability discrimination legislation, viz.:

- federal *Disability Discrimination Act 1992* ('***DDA***') http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/ (or perhaps one of its various State counterparts); and

- federal *Disability Standards for Education 2005* ('**Standards'**) https://www.legislation.gov.au/Details/F2005L00767
- which are subordinate legislation made under the *DDA*, and whose provisions are enforceable (*DDA*, s. 32).

When some enterprising parents print something off the internet to draw their school's attention to such legislation, the school's response is often simply something such as:

- "Oh no, we don't bother with that here. We are too small or big or busy or crowded or rural or inner-city or poor or understaffed or low-SES or high-SES, or academically selective, etc, etc.....", or

- "Well it may have been a disability when he was little, but this is a high school and we want to treat our students here as adults who are totally responsible for their own success (or not…) so we can't mollycoddle them."

There is always SOME excuse.

Comparatively few schools seem to understand their obligations under the *Standards* to make reasonable adjustments for students with disability so that the student can access and participate in their education and attempt their exams **on the same basis as students without disability** (*Standards*, ss. 3.3 (a), 6.2 and 6.3).

Similarly, comparatively few schools seem to understand that the provisions of the *Standards* are enforceable *(DDA,* s. 32*)* and, depending on the circumstances and certain conditions precedent having been met, arguably provide **entitlements** to the child – that they are **law,** not mere policy, and thus cannot be summarily ignored or explained away by education providers.

In almost all cases, the legislation is currently being honoured more in the breach than in the observance.

Somewhat surprisingly, some DEC principals point to the DEC '*Local Schools, Local Decisions'* policy (http://www.dec.nsw.gov.au/about-the-department/our-reforms/local-schools-local-decisions ) to support their contention that, even as a State school, they are not governed by DEC disability policies which have been posted on the Department's website – policies which they openly and publicly describe, dismiss and disparage as merely 'aspirational'. This still happens despite the fact that principals have been told by DEC that the policy in question does not entail complete autonomy in all contexts.

With respect to applying to NESA for disability adjustments for NAPLAN or for the HSC final exams, far too many schools claim that they've never done that before, that they don't know how to do that, or that they don't know whether or how a negative decision can be appealed [despite the fact that with respect to the HSC, all that information is freely available here: http://www.boardofstudies.nsw.edu.au/disability-provisions/guidance.html].

Often parents report that school personnel claim they cannot even imagine what a disability adjustment would look like. Some are unable to name even one example of such an adjustment. When directed to examples of such adjustments in academic literature or in the recommendations of reports authored by diagnosing professionals, the response is far too frequently, "Oh no!  We can't do that here because [insert all manner of hollow excuses]."

Similarly, parents and private psychologists alike regularly complain about what they regard as an astounding lack of knowledge on the part of NESA staff who are charged with answering the phone and explaining NESA's policy with respect to applications for disability adjustments for NAPLAN and for the HSC final exams - personnel who clearly have no understanding of the meaning of IQ test reports or disability assessment reports.

Private professionals frequently question the qualifications and training of some of the people employed by NESA to review applications. (This may perhaps be explained by the fact that a parent applied for a job at NESA to do just that, and was told that they would be expected to review 6 files an hour for a very small wage.)

## 4.2 Lack of compliance with legislative obligations - the excuses:

When a parent submits to a school a report from a professional (eg, paediatrician, occupational therapist, speech and language pathologist, optometrist, audiologist, psychologist, medical practitioner, etc) containing a diagnosis of a child's disability, medical condition or other professionally recognised disorder, together with a list of recommendations for disability adjustments and interventions to support the child in the classroom and/or during tests and exams, education providers far too often:

- attempt to unilaterally overrule the professionals' recommendations on a variety of far-fetched and patently specious and irrelevant grounds, or

- otherwise come up with countless unsubstantiated reasons as to why the recommended disability adjustments cannot be implemented, including sometimes simply a claim that acting in compliance with the *Standards* would be just too hard.

Examples of such excuses are listed in **Appendix A**, and a few of the more common ones are further explored in **Parts 4.2.1 to 4.2.7** below.

These excuses reflect the fact not only that too many education providers generally are unfamiliar with the *DDA* and the *Standards,* but also that their decisions tend to be based capriciously on personal beliefs and porous prejudices.

In my experience, except in the case of a visible, physical disability, a child has very, very little chance of having the recommended adjustments approved unless the parent is particularly feisty, and appeals and appeals and appeals, and finally lodges a complaint with the HRC for failure to comply with the *DDA* and the *Standards*, as described in **Part 5** below.

## 4.2.1 “But it’s not a ‘real’ disability”

In the face of a parent’s initial request for disability adjustments, too many teachers and other school personnel reportedly:

- declare that in their view the child does not have a ‘real’ disability but rather has simply never received correct and effective teaching during early primary school, or
- flippantly dispute professionals’ documented diagnoses of disability, without considering legislative definitions of ‘disability’, or
- enthusiastically discourage parents from applying to NESA for disability adjustments for NAPLAN or for the HSC final exams by claiming that the process is just too difficult, and by stating categorially something such as, “Don’t bother – you won’t get it! No one ever does.”, or
- tell parents that the written recommendations of certain named professionals are ‘never accepted’ because “Everyone who goes to that doctor/psychologist etc always gets diagnosed with XYZ disability.”

Such assertions are unsubstantiated.

I have indeed sent parents to the named doctors and other specialists, practically on their knees begging for their child to be diagnosed with XYZ disability, and the professional, after thoroughly assessing the child, has refused on the grounds that the child does not meet DSM criteria for that disorder.

## 4.2.2 “But there’s no money for that - it’s not a ‘funded’ disability”

Too many education providers don’t understand the difference between ‘disability’ as defined in departmental policy for purposes of public **funding,** and ‘disability’ as defined in legislation for purposes of disability discrimination legislation and hence disability **adjustments**.

Accordingly, schools point to lack of funding as a justification for not providing adjustments on the grounds that a child’s diagnosed disability does not fall clearly within one of the limited number of categories of disability which have been selectively determined, **as a matter of policy**, by DEC for additional funding: https://schoolsequella.det.nsw.edu.au/file/087c5e87-ef8e-4f7f-9806-83eb61fa00bf/1/Students-with-disabilities-in-regular-classes-funding-support.pdf

These disabilities are:

- moderate or severe intellectual or physical disabilities
- mental health disorders
- autism
- hearing or vision impairments.

And of course these disabilities are all eminently worthy of funding – but are they any more so than all the other disabilities which qualify within the definition of ‘disability’ under the *DDA* and the *Standards*, yet for which no funding is available?

Parents are still being regularly told, “Take this ADHD diagnosis back to your paediatrician and ask for autism instead – and THEN we’ll talk.”

But what parent really wants a diagnosis of a disability which their child actually doesn’t have, especially one for which no medicine is available as a possible treatment?

Of course it’s patently true that schools are not adequately resourced when it comes to supporting students with disability in mixed-ability classrooms, a fortiori in the current situation:

- where the concept of ‘inclusion’ is being universally applauded and implemented (but not fully resourced) in schools in general, and

- when teachers do not receive mandatory training in modifying their daily classroom practices in the very challenging fashion demanded by the ‘inclusion’ model.

Schools understandably argue that, if the resources which are known to be required are not available and provided, it is unrealistic for the community to expect that teachers can adequately meet the needs of children with disability, especially in the case of:

- children with multiple disabilities and complex needs, or
- children for whom an individualised or personalised learning plan (however called) must be devised, implemented, reported upon and continually updated.

Nevertheless, parents report that the “no funding” argument is too often being raised as a justification to do nothing for their child with disability. Surely the answer is to solve the funding problem so that all disabilities, not just a selective sprinkling of officially ‘funded’ ones, can be properly supported in compliance with the legislation.

### 4.2.3 “But it’s cheating”

Sometimes school personnel flatly refuse to entertain the possibility of implementing disability adjustments because they seem to sceptically regard them as conferring some kind of ‘advantage’ on the child with disability: "We can’t allow your child to have XYZ because it wouldn’t be fair to the others.”

They generally do not understand:

- that equity does not entail always treating all children exactly the same, but rather treating each child according to what that child needs, or

- that disability adjustments will not and cannot ‘level the playing field’ in any meaningful way.

Disability adjustments **help a bit, but they do not equalise.**

For example, extra time in an exam to address a disability which results in a slow processing speed or a slow reading speed or a slow handwriting speed or a poor working memory or an uncorrectable vision impairment does not bring the child with the disability up to the level of a child without the disability – it just helps.

By way of analogy, a child who uses a wheelchair cannot play basketball except in the wheelchair. Accordingly, allowing that child to use the wheelchair (which here constitutes the disability adjustment) helps the child to play and to participate in the game. However, the wheelchair does not, by itself and without more, bring that child up to the level of the other children running around on two legs – the wheelchair helps, but it does not equalise. It does not remove the disability or make all players the same. The child in the wheelchair is still slower. And the playing field is not ‘levelled’ – it is just tilted slightly so that it’s not quite as ‘non-level’ as it was.

Giving children with disability extra time for tests and exams does not make them as fast as children without disability, who can do their best in the time allowed and thus don’t need extra time, and who have been found in research studies to NOT benefit from it (see **Part 8.6.1** below).

And of course disability adjustments **only partially compensate** for the effects of a child’s disability, and in no way confer an unfair advantage on them. Adjustments will not completely enable the child to perform as well as if they did not have the disability in the first place.

Further, even with adjustments, the child will have to **continue to work very hard** to attempt to overcome some of the effects of their disability, because no amount of adjustments will help a child who has not learned their work and has not properly prepared for their exams.

Nevertheless, parents too often report that their enquiries to schools, DEC and NESA are sometimes met with a thinly disguised response to the effect that the parent must be some kind ‘dodgy cheat’, attempting to fraudulently procure an ‘advantage’ to which their child is not entitled.

A moment’s reflection will contradict this widespread but meretricious belief.

A typical application for disability adjustments could be expected to include a report from:

- a developmental paediatrician,
- an educational psychologist,
- an occupational therapist,
- a language pathologist,
- an optometrist or ophthalmologist, and/or
- an audiologist.

For the HSC final exams it would also include reports from several of the child’s teachers describing how the disability has been affecting the child’s schoolwork and past tests and exams.

Is it remotely possible that any parent, no matter how well connected, would have the power to cajole, convince or bribe each and every one of those professionals to conspire to attest to the fact that a child has a disability when in fact the child does not? To knowingly provide fabricated evidence in an attempt to enable the child to ‘cheat’?

Would any of those professionals risk their professional qualifications, licence or reputation by deliberately including information which is not true for the sake of one measly fee from a parent?

### 4.2.4 “But she’s already gifted”

Although there is no exemption, express or implied, in the *DDA* or the *Standards* for high IQ children with disability, far too many schools point to a child’s concomitant giftedness to justify a decision to not approve professionally recommended and documented adjustments.

Typical rejoinders are, “But she’s so clever, surely she’ll pass anyway. She’ll do just fine.” or “But he’s not failing – he’s doing average… and of course there’s nothing the matter with average now is there?”

In general, schools and teachers rarely know enough (or anything at all…) about the possibility that a child can BOTH be gifted AND have a learning disability.

They do not understand that all gifted children can, and some indeed do, suffer from any one or more of the disabilities, disorders, dysfunctions, deficits, deficiencies, difficulties, disadvantages, detriments, impairments, impediments and ailments which may befall non-gifted children – except of course intellectual impairment.

**A high IQ is protective against nothing but a low one.**

Similarly, on the Gagne model of giftedness which has been expressly adopted:

- by ACARA http://www.australiancurriculum.edu.au/StudentDiversity/Gifted-and-talented-students, and
- by DEC https://education.nsw.gov.au/policy-library/policies/gifted-and-talented-policy para 3.2, and https://schoolsequella.det.nsw.edu.au/file/eb84936c-e00b-4812-b125-112360ca26f5/1/polimp.pdf page 6),

approximately 10% of all students may be assumed to be gifted (ie, high intellectual potential but not necessarily high grades), and accordingly 10% of those diagnosed with learning disabilities or other special needs [except intellectual impairment] may be assumed to be also gifted (albeit as yet perhaps unidentified as gifted).

Overseas researchers assert that somewhere between 9 and 16 per cent of gifted students are struggling with a (sometimes undetected) disability.

**Giftedness does not preclude disability – and vice-versa**.

The fact that a child may BOTH be gifted AND have a learning disability is expressly recognised by:

- ACARA: http://www.australiancurriculum.edu.au/StudentDiversity/Who-are-students-with-disability and http://www.australiancurriculum.edu.au/StudentDiversity/Gifted-and-talented-students and http://www.australiancurriculum.edu.au/StudentDiversity/Who-are-gifted-and-talented-students and

- the Education Council, on its Nationally Consistent Collection of Data (‘**NCCD’**) website: http://www.schooldisabilitydatapl.edu.au/data-collection-steps/step-1---is-there-an-adjustment and

- the NSW DEC: https://education.nsw.gov.au/policy-library/policies/gifted-and-talented-policy para 3.1

  https://schoolsequella.det.nsw.edu.au/file/eb84936c-e00b-4812-b125-112360ca26f5/1/polimp.pdf pages 5, 6 and 8

  https://schoolsequella.det.nsw.edu.au/file/c1498bd3-2044-48c7-9c3d-1e61fe0fed22/1/Gi-T-Identification.pdf pages 5, 9, 10 and 13-14

Some education providers have actually alleged to parents that disability adjustments are allowed only for **low-IQ** or otherwise struggling students.

Such attitudes are counter-factual and indefensible.

In fact, a student with a very high IQ of 150 is just as disadvantaged by, for example, visual impairment or motor dyspraxia as a child with an average IQ of 100 (perhaps more so, in terms of the frustration engendered by the simultaneous presence of both characteristics).

Gifted children with disability can be expected to be simultaneously developmentally behind and ahead of their age peers and to present a complex configuration of learning needs.

The fact that a child may have been identified as gifted, or may be enrolled in a select-entry class or school, or may have been accelerated, in no way implies that the child could not also have a disability or will not need disability adjustments to succeed academically.

And the fact that such students apply for disability adjustments should not be cynically viewed as an indication that the student or their parents are thereby trying to deceitfully secure some form of undeserved ‘advantage’ vis-à-vis average-IQ children.

Applications for disability adjustments should be approved or rejected always and only on an ability-blind basis.

Parents note their frustration when an education provider:

- refuses to implement disability adjustments on the grounds that their gifted child's work is already above the level of their cohort, or

- refuses to allow the gifted child to continue in a remedial or learning support program, or to continue to be 'counted' for purposes of the NCCD exercise, for the very same reason.

Their work may indeed be at the level of the 'average student' in the cohort but still is not in keeping with the level of the gifted child's academic potential.
In other cases, disability adjustments are initially approved on the grounds of a student's disabilities, but then almost immediately withdrawn or curtailed or decreased on the grounds of their giftedness (and see **Part 4.2.6** below)

In the case of a child whose giftedness is identified but whose disability is not, the child's underachievement or wildly erratic, inconsistent academic performance is invariably put down to laziness and lack of motivation. Accordingly, the child's report card is simply a litany of all his miserable shortcomings, without any practical suggestions as to how the child could improve.

If a teacher believes that a gifted child is indeed just lazy, it is easy to understand why any mention of the child's rights under the *Standards* is greeted with surprise and derision. However one Queensland study found that of 20 so-called 'lazy' children, 17 (85%) were struggling with an invisible and unidentified disability: http://eprints.qut.edu.au/29708/1/c29708.pdf - they were not in fact 'lazy' after all.

Further, in the case of the HSC final exams, the point is made repeatedly by NESA personnel that disability adjustments are designed just to allow students with disability to 'access' their exams (ie to read the questions and to communicate the answers: http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.html), instead of to attempt the exams '**on the same basis**' (*Standards*, ss. 3.3 (a) and 6.2 (1)) as a student without disability, and certainly not to perform on them in accordance with their academic potential (and see also **Part 4.2.7** below).

Of course, some gifted students will undoubtedly 'pass' their exams without the adjustments, but still they will not have been presented with an opportunity to show what they have learned and what they can do **on the same basis** as a student without disability, gifted or otherwise.

### How many students with an IQ in the 99th percentile who have been excelling in school since Year 1 will be satisfied with just ‘passing’ as they progress through high school?

Parents, teachers, school counsellors and private psychologists report that in the same school, two Year 12 students with virtually identical disabilities (and with equal degrees of impairment and the same or equally strong medical and other professionals’ reports and teachers’ assessments) will apply to NESA at the same time, and:

- the application of the **gifted** student who is already achieving good grades in Year 12 (but is realistically aiming for higher ones....) will be mysteriously refused, while
- the application of the **struggling**, almost-failing student will be approved, without explanation or justification.

It is understandable then that psychologists and other medical and allied health professionals (who prepare numerous supporting reports every year and can accordingly accurately compare their many client-applicants from year to year) eventually lose all respect for a system which they come to view as little more than a lottery.

Such authoring professionals decry the shortcomings of a system under which one year a patient or client with a reading speed in the 4th percentile will be allowed extra time but the next year another child with an identical disability and an identical level of impairment will not, seemingly for no reason. And they marvel when another patient or client at a different school with a much lower measured level of impairment qualifies for extra time and everything else they have applied for, again seemingly for no reason.

And then, seeing no consistency in the outcomes, school personnel claim to be reluctant to spend any of their very limited time applying to NESA for disability adjustments for gifted students who are already doing well and not failing. School officials assert to parents that they instead wish to concentrate on applications for **struggling** students who are failing or likely to fail (contrary to the opposite assertion on page 15 of the NSW Ombudsman’s May 2013 report to Parliament on HSC Disability Provisions: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0006/9789/HSC-Disability-provisions.pdf .)

Realistically, disability adjustments can make an **enormous difference** to the future of a very clever child with disability: the difference between an ATAR 99 and 93 has huge implications for tertiary study – the difference between 69 and 63 less so.

Ironically, once gifted students with disability finally enrol in university, where the disability officers are well trained and the *Standards* much better understood and enforced, these students' difficulties in obtaining adjustments usually disappear. The adjustments are invariably granted as of right once the qualifying medical and psychological evidence is produced. The university disability officers invariably express shock and surprise that an identical application to NESA for identical adjustments for the HSC final exams the previous year was wholly rejected.

The problem is however that too many gifted students with disability never actually get to go to university in the first place – either because their unaddressed and unsupported disabilities prompt them to want to drop out of high school early, or **because their giftedness and their already adequate school performance are raised by NESA as an excuse to reject their applications** for their HSC final exams – adjustments which they need in order to show what they have learned and what they can do **on the same basis** as a student without disability – and hence to obtain the ATAR required to be accepted into their desired course at university.

### 4.2.5 "But nothing before Year 12 'counts' anyway, so why bother?"

Sometimes when parents request disability adjustments for in-school activities and internal assessments and tests, they are met with the excuse that it's really not worth the trouble because, "Your child is only little and nothing before Year 12 'counts' for anything anyway".

While perhaps technically correct in terms of what goes towards the calculation of an ATAR, this excuse ignores the fact that disability adjustments are available for NAPLAN, ICAS, selective schools entrance tests and scholarship tests, all of whose results may be and regularly are all along being used to make critical decisions regarding the child's whole future.
In addition, it is wise to have unambiguous precedents extending as far back as possible, because any disability first documented in late high school for purposes of Year 12 disability adjustments may be regarded with suspicion as the attempt of an overly ambitious parent to fabricate a disability and thus to secure an 'advantage' for an underachieving child.

Further and more importantly, by Year 12 a child has already formed a clear view of their academic ability and academic self-efficacy. A child who has spent the last 11 years failing because they have been denied disability adjustments is invariably so discouraged from years of underachieving that they have probably already given up, decided they are 'stupid', or developed behavioural challenges.

How difficult would it be to assure such as child that once they get extra time and a computer for their exams, they'll finally be able to show all they know, and will consequently achieve the good grades they should have been enjoying all along?

What about all the years when they've been disengaged and not learning and waiting to be old enough to quit? How hard would that achievement gap be to fill?

**Introducing disability adjustments only at the eleventh hour for something which 'counts' is as pointless as taking away a vison-impaired child's glasses in Year 1 and giving them back in Term 3 of Year 12 just in time for the HSC final exams.**

### 4.2.6 "But he's had adjustments before, and now he's improving, or now he doesn't want them anymore"

Children with disability whose adjustments have been approved at first instance often report that they live in constant fear that the adjustments will be arbitrarily withdrawn later on – for example:

- if the child's grades begin to improve, or
- if the child does not always use the full extent of the adjustments for each and every test (eg, not always using or appearing to use every minute of approved extra time, or every rest break, or electing to print by hand very short answers or mathematical solutions in a test for which typing on a computer has been approved), or
- if occasionally the child refuses an offer of disability adjustments seemingly for no reason.

A blanket decision to discontinue adjustments in any such circumstances is unwarranted.
Sometimes adjustments are arbitrarily withdrawn or refused even when a child has previously regularly used them for tests such as NAPLAN or ICAS, especially in the case of a child who is patently clever and who begins to get better grades or is already achieving well at school (see **Part 4.2.4** above).

In one case an application to NESA for the HSC final exams was refused on the grounds that the child had had disability adjustments for the [now discontinued] School Certificate exams in Year 10 and had done quite well on those exams. Accordingly, it was argued, his permanent disability must have 'cleared up' and so he could not have the adjustments again for the HSC final exams (ie, "If a child is doing well, then clearly the adjustments must be 'working' – so let's take them away from him.")

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf made in the context of disability discrimination legislation similar to Australia's) provide expressly, with respect to disability adjustments (therein called 'testing accommodations'), that

> *Proof of past testing accommodations in similar test settings is generally sufficient to support a request for the same testing accommodations…* (page 5).

Under the NESA policy, however, parents must begin all over again for the HSC final exams, even if they have inches of documentary proof that the child has been using a previously approved disability adjustment for the past 11 years.

Similarly, even children without disability will experience varying performance on tests and exams, depending perhaps on the day, on the subject being tested, or on a variety of environmental factors. Students with disability are no different.

Accordingly, if an adjustment has been provided to address for example an anxiety disorder, it takes no great insight to understand that the extent of the effects of that anxiety may in fact vary from day to day. Sometimes the child may need the full extent of each adjustment and sometimes not.

A child who on occasion chooses to not use the full extent of their approved extra time or rest breaks should not thereby be taken to be indicating that they never needed those adjustments in the first place and will not need them again.

Especially in the case of an anxiety disorder, part of the purpose of the approved extra time is simply to keep the lid on the anxiety which invariably surfaces at the beginning of every exam – just KNOWING at the beginning that the child will have enough time to finish is often the key. There is absolutely no legislatively-imposed duty to use all the extra time or all the rest breaks, and the child with disability is under no duty to sit in their seat once finished and pretend that they're still working till the end of the extra time – in fact, the extra time is theirs to do with as they wish.

And there is nothing in the *DDA* or the *Standards* stipulating that a disability adjustment ceases to be 'reasonable' or necessary if it is not completely used on every single occasion.

In similar vein, some children struggle with the fact that they have a disability in the first place, and crumble in the face of the consequent embarrassment which they perceive logically follows from that fact. When loudly asked in the presence of their peers, "Do you want your extra time today?", it is little wonder that some children with disability will sometimes find that, instead of experiencing the 'shame' which comes with being singled out for what they may regard as 'special treatment', it is just easier to reply "No".

And sometimes it is actually a symptom of the disability in the first place that the child will not want to draw attention to themselves by continually having to remind teachers about the adjustments which have been approved and to which they are entitled. Said one teacher, "He stopped reminding me about the extra time so I assumed he'd got over wanting it."

Some parents have had to expressly forbid in writing a teacher from referring to a child's disability or disability adjustments within the hearing of other children. Why should parents find it necessary to lodge such a formal 'speak to me, not my child' admonition with a school?

### 4.2.7 "But it's not allowed by the 'rules' on a government website

Sometimes schools claim that they are 'not allowed' to provide disability adjustments because all schools are governed by whatever a testing administration authority (such as DEC, NESA or ACARA) posts on its website with respect to what will and will not be 'allowed' in the way of adjustments, and which kinds of disabilities will and won't qualify in the context of specified named tests (such as the HSC, NAPLAN or select-entry classes and schools).

This is not the case.

The lists of disability adjustments which appear on such websites stem simply from bureaucrats' self-authored, self-serving, capricious **policy, not law.** Few schools and teachers (and even medical professionals) are aware of this.

Such website 'rules' or 'guidelines' or 'protocols' [however called] are attempts by some testing administration authorities to unilaterally circumscribe/narrow/limit what is deemed to be a 'reasonable' adjustment under the legislation – but such website pronouncements, being mere policy and not law, are always challengeable and in my experience are regularly not upheld or obeyed on appeal and are routinely overridden by the recommendations of a professional who supplies cogent evidence in support.

For example, some such website pronouncements include ‘rules’ such as:

- a child must be able to prove that they are already regularly using a given adjustment in the classroom before it will be approved for a State test

- adjustments are designed to help only children who would otherwise be completely prevented from accessing the test or reading the questions or communicating their responses (ie, blind, no fingers, etc)

- the child must prove that they are unable to use one kind of disability adjustment before they will be allowed to have a different kind (usually in the context of being required to fail when dictating to a scribe before being given permission to type answers on a computer – see further with respect to NESA – **Part 7.5.2** below)

- a diagnosis of disability X will justify the provision of 5 minutes’ extra time per half hour but never any more, regardless of level of impairment occasioned by that disability.

In fact the *DDA* and *Standards* say nothing about any of the 4 so-called ‘rules’ listed above: they are policy but not law.

Of course it may be that past regular use of a given disability adjustment may constitute evidence of its continuing necessity, but such evidence would be persuasive rather than probative. There are many reasons why a child may be applying for a new disability adjustment for a State test. For example, one teacher reported:

> *“I had a child in my class with a professional’s recommendation for extra time for NAPLAN, and I was asked if this was an adjustment which she usually used in my classroom. I had to say no – but I was not allowed to add the explanation: that I never give timed tests in my classroom and everyone is allowed to have as much time as they wish - so no, this girl had never had ‘extra’ time – but then neither did she need it and neither had anyone else.”*

The arbitrary website ‘rule’ (about proving past use in the classroom in order to qualify for use for NAPLAN) had operated to ensure that this girl with disability was not allowed to attempt her NAPLAN tests **on the same basis** as a child without her disability.

Professionals also are **not bound** by the lists of so-called ‘allowable’ adjustments which appear on such websites. They are free to recommend whatever adjustments they feel a child needs.

Adjustments are not tied to the specific disability which they are being recommended to address. It is not a case of selecting a disability adjustment from a pre-determined menu. There are no recognised or prescribed ‘dysgraphia adjustments’ or ‘autism adjustments’ stipulated in the legislation.

Government websites listing ‘rules’ with respect to ‘what is available for what’, while an understandable attempt to introduce some form of consistency, actually do not result in uniformity because the legislation itself does not establish a system of merely listing all the possible disabilities and dictating, “ASD gets only YXZ, and ADHD gets only ABC, and dysgraphia gets only PQR, etc”.

Rather the legislation operates within a framework of ‘reasonable’ adjustments. It is a matter of looking at the level of impairment of each child, in light of their professionally documented evidence, and asking how each child is affected by their disability in the exam context, and what would be a **reasonable** adjustment for THIS child with THIS disability and THIS level of impairment for THIS type of exam of THIS length.

Of course this will be a question of fact based on the evidence in each case. Two children with the same diagnosis may have very differing needs in an exam situation. They may require different adjustments or different levels or degrees of the same adjustment.

Along different lines, some schools are told by education authorities or testing administration authorities that the decision as to what is ‘reasonable’ always rests with the school. They are not however told that the school must still be absolutely scrupulous in its determination of what is ‘reasonable’ and, most importantly, that its decision is always open to challenge.

Neither are they told that:

- prima facie an adjustment IS ‘reasonable’ “unless making the adjustment would impose an unjustifiable hardship” on the education provider (*DDA*, s. 4(1)), and

- “the burden of proving that something would impose unjustifiable hardship lies” with the education provider (*DDA*, s. 11(2)). Mere assertion is not sufficient, and a parent is not required to disprove the assertion.

In particular, the information which NESA posts on its websites with respect to disability adjustments for the HSC final exams is replete with rules and regulations and admonitions.

When liaising with parents whose children are applying for disability adjustments for HSC final exams, some schools claim that they are powerless in the face of an omnipotent NESA, and that they are unquestionably governed by whatever NESA chooses to post on its website with respect to what will and will not be 'allowed' in the way of adjustments and which kinds of disabilities will and won't qualify for them.

For example, the NESA website includes 'rules' such as [*emphasis* mine]:

- Disability adjustments are "designed to help students who couldn't otherwise make a *fair attempt* to show what they know in an exam room." http://www.boardofstudies.nsw.edu.au/disability-provisions/

- Disability adjustments are available only where "the disability is such that a practical arrangement is required to *reduce disadvantage* in an exam situation." http://www.boardofstudies.nsw.edu.au/disability-provisions/

- Disability adjustments are available only to "students who wouldn't otherwise be able to make a *reasonable attempt* at an examination paper." http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.html

- Adjustments are available only for "a disability that would, in a normal examination situation, *prevent* the student from reading the examination questions and/or communicating a response." http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.html

- The student must prove that they are unable to use one kind of disability adjustment before they will be allowed to have a different kind (usually in the context of being required to fail when dictating to a scribe before being given permission to type answers on a computer): http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf page 4 (and see **Parts 7.5.2** and **8.6.2** below)

- A diagnosis of a disability may in some cases justify the provision of **5 minutes'** extra time per half hour http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf (pages 6-7) but no more, regardless of the level of impairment occasioned by the disability – be it for example mild dyslexia or severe dyslexia – and regardless of the amount of extra time which has been recommended by the diagnosing professional, and regardless of whether the diagnosing professional has supplied evidence that the child reads or writes **half** as fast as a child without disability or a **quarter** as fast or an **eighth** as fast.

> Of course in some cases, 5 minutes will be all that is required to allow a child with disability to show what they know and what they can do **on the same basis** as a child without disability. In other cases, however, the 5 minutes' extra time will allow the child to sneeze and blow their nose five times more than a child without disability – but for that child with disability, a meagre 5 minutes will do little to address the level of impairment occasioned by the disability in any sustained and meaningful way.

As noted above, the *Standards* themselves say nothing about any of the above 'rules' – which are merely NESA policy and not law. Accordingly schools are not bound by the so-called 'rules'.

Specifically, the *Standards* say nothing about anyone making a 'fair attempt' or a 'reasonable attempt' or being 'prevented' from doing anything, or showing how they can fail in their attempt to use one type of adjustment before a different one will be approved. The *Standards* themselves say nothing about 'reducing disadvantage' or a prescribed maximum of 5 (or any other numeral) minutes per half hour extra time.

Instead, the test in the *Standards* is whether the proposed adjustment would allow the child with disability to participate in their education (including assessment) '**on the same basis** as a student without disability' (*Standards*, ss. 3.3 (a) and 6.2 (1)) – not whether the student is 'prevented' from reading the exam paper or communicating their responses.

To comply with the *Standards*, schools and NESA are to implement, inter alia, measures which ensure that "the assessment procedures and methodologies...are **adapted** to enable the student to demonstrate the knowledge, skills or competencies being assessed." (Standards, s. 6.3(f) [**emphasis** mine]).

The *Standards* speak in terms of making 'reasonable adjustments' (ss. 3.4 and 6.2 (2)) – and of course what is **reasonable** for THIS child with THIS disability and THIS level of impairment will vary from case to case (s. 3.4) depending on the facts of the case.

What is 'reasonable' is a matter of **evidence** in each case – not a matter of mere assertion by a parent that a desired adjustment is indeed reasonable or a matter of mere assertion by NESA that it isn't.

Crucial to the strength and probative value of the evidence submitted in the applications with respect to what is 'reasonable' are the reports authored by high credentialed professionals, not only diagnosing the disability, but also measuring the level of functional impairment and making specific and detailed recommendations for THIS child with THIS disability and THIS level of impairment.

The number of times that NESA will initially reject or overrule the recommendations of highly credentialed professionals is simply astounding – especially when on appeal or after a HRC conciliation conference, the professionals' recommendations end up being accepted after all.

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf made in the context of disability discrimination legislation similar to Australia's) provide expressly, with respect to disability adjustments (therein called 'testing accommodations') [**emphasis** mine]:

> *Testing entities **should defer to documentation from a qualified professional** who has made an individualized assessment of the candidate that supports the need for the requested testing accommodations.* (page 7)

The NESA policy of NOT doing that reflects the sometimes thinly veiled suspicions on the part of its representatives that the opinions of professionals cannot be trusted, either because the professionals are incompetent, or because some professionals are supposedly too influenced by the demands of their fee-paying parent-clients and are consequently forced to deceitfully document a disability which does not in fact exist, as discussed in **Part 4.2.3** above.

Of particular concern in this connection are:

- the 'case studies' portion of the NESA website here: http://www.boardofstudies.nsw.edu.au/disability-provisions/case-study.html and
- the 'case studies' section of the Schools' Guide here: http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf (pages 6-7)

all of which leave the impression that, as a matter of NESA policy, "X is available for Y, and Z is available for Q" or "We never allow ABC for XYZ."

I submit that anything on the DEC or NESA websites purporting to impose a blanket prohibition on any specific disability adjustment for all applicants and/or in all circumstances, or in all circumstances where specified conditions precedent have been met, regardless of the severity of disability or level of impairment, may arguably be unlawful under s. 44(1) of the *DDA*, in that such a website notice:

- would arguably constitute an 'advertisement' for purposes of s. 44(2), and

- “could reasonably be understood as indicating an intention…to do an act that is unlawful under a provision of Division…2” of Part 2 of the *DDA*, viz. s. 22(2A).

So many parents report that their children’s schools claim to be ‘scared’ by all the blanket ‘rules’ and prohibitions which they read on the NESA website. Some schools have said that they won’t even consider applying for anything which is not expressly allowed by the NESA ‘rules’, for fear of ‘getting in trouble with NESA’. Why would so many schools feel that they have to be so afraid of NESA?

Other schools allege that of course they’d like to implement disability adjustments for schoolwork and for in-school tests but it would be ‘unfair’ to thereby raise the student’s expectations and allow the student to come to rely on the adjustments – because what will happen if the adjustments eventually turn out to be against the NESA ‘rules’ and are thus not approved by NESA for the HSC final exams in several years’ time at the end of the child’s school career?

This response obviously ignores the importance of setting a longstanding precedent for disability adjustments and overlooks the fact that individual schools have their own obligations to children with disability under the Standards, independently of the State testing administration authorities.

Each school principal in NSW is the ultimate decision maker for in-class adjustments and for test adjustments for all non-State assessments up to and including the HSC exam trials. Disability adjustments will allow the child to proceed through school better able to show what they have learned and what they can do, and accordingly with a higher sense of academic self-concept and self-efficacy.

And in any event, even if adjustments are ultimately denied at first instance for the HSC final exams, experience shows that, with the appropriate evidence, they are usually forthcoming on appeal.

**Withholding adjustments for 12 whole years for fear that that they may not be granted at the end of the 12th year is clearly unjustifiable.**

## 4.3 Lack of consistency amongst schools

One of parents’ most frequent complaints in this context concerns the lack of uniformity or consistency in the way that DEC and NESA disability policies and initiatives are being implemented and obeyed.

DEC website documents and rhetoric generally do not filter down to individual schools, such that DEC policies are being implemented in a haphazard, non-standardised and somewhat shambolic fashion, often seemingly capriciously and based on the personal beliefs or whims of individual school personnel. Again these sometimes vary even from class to class and from Year to Year.

Parents in GLD Australia report that they get wildly different responses when they ask exactly the same question of different schools. While one enterprising school will take the initiative and ring a parent to offer disability adjustments for NAPLAN on the grounds of ADHD, a parent at a neighbouring school will report that, when they applied for similar adjustments for the very same disability, the answer was a categorical, “No there’s never anything available for ADHD.”

Similarly, in the context of the HSC final exams, there is enormous variance in individual high schools’ (in all three sectors) in-house policies and procedures regarding decisions on whether to assist a student to apply to NESA for disability adjustments.

While the NESA website clearly explains to schools how to apply, it is up to each individual high school to decide if they can be bothered reading it, let alone actually doing it.

Some well-intentioned schools (especially independent schools) and teachers become skilled at understanding the NESA criteria and procedures. These schools allot adequate time to staff to become proficient at drafting and submitting cogent applications and meeting strict deadlines.

Other schools and teachers are utterly hopeless and must be dragged kicking and screaming into the process (often making it quite clear that in their view disability adjustments constitute ‘cheating’ – as discussed in **Part 4.2.3** above).
Some schools mysteriously manage to repeatedly ‘miss’ NESA’s deadlines (eg, deadlines to order HSC exams to be printed on coloured paper, deadlines to lodge appeals, etc.) – a practice which can only be described as negligent at best, and duplicitously intentional at worst.

Other schools expressly profess to be tired of applying to NESA for HSC disability adjustments because over many years they can see no pattern as to whose applications are approved and whose are not (as discussed in **Part 4.4** below).

## 4.4 Lack of transparency

Sometimes parents complain about a lack of transparency when they apply to schools for their children with disability to have professionally recommended disability adjustment in the classroom for schoolwork and tests.

Applications are refused seemingly for no reason, and some parents have been told by educators simply, “It’s my decision and I say NO! That’s all you need to know and don’t ask again.”

**Appendix A** is replete with examples of situations where parents have been left wondering why – according to what or whose criteria – their requests are being summarily refused or ignored.

For example, a parent may have a professional’s recommendation that their child should be allowed to type on a computer in the classroom instead of being required to copy notes off the board in handwriting. The parent’s request for that adjustment is refused without reasons or discussion. If the parent then notices that another child in the same classroom is indeed allowed to regularly use a computer, the parent may wonder why that is. They may indeed ask the classroom teacher about the seeming discrepancy.

Experience shows that the response is invariably something about it being against a teacher’s code of conduct to discuss one child’s needs with the parent of another child – and of course that is correct. But the parent who has been refused is left wondering what tests or cut-off scores or other criteria were used to approve the eligibility of the other child but not their own.

What tests are being applied by whom to determine what is ‘reasonable’ in the circumstances, and why is the parent not allowed to express a view on that issue?

Where are the guidelines? And who has access to them?

Raising such questions at a school sometimes prompts parents to notice a novel outright hostility or simply a new chill in the air which wasn’t there before.

When it comes to the HSC final exams, the situation becomes even more deplorable.

Professionals report that their written evidence is routinely overruled or not understood. NESA staff either summarily refuse to discuss the reports with parents and even with the authoring professionals, or begin to discuss them and immediately reveal that they have not the vaguest clue about the meaning of their contents.

Evidence is ignored in whole or in part, even when multiple kinds of professionals have made the same recommendations for disability adjustments, and NESA staff refuse to engage in discussions with respect to what evidence was and was not considered.

Written guidelines do in fact exist for the HSC final exams, but the guidelines are said to be ‘secret’.

As noted in **Part 4.3** above, high school teachers, who are not privy to the secret guidelines, can’t fail to notice in the HSC context that sometimes they will submit to NESA identical or almost identical applications for two students and the first will be approved and the second not.

The letter to the unsuccessful student’s school includes no reasons for the refusal, save for empty platitudes such as:

- The writing samples provided demonstrate that the student’s ability is outside the NESA guidelines for this adjustment, or
- The evidence provided does not demonstrate the need for this adjustment, or
- The evidence provided does not demonstrate that the impact of the student’s disability in examinations is relieved by the use of this adjustment.

Parents and teachers are left wondering what exactly all that means. Clearly the evidence didn’t meet the guidelines – but how?

When teachers ring NESA to ask for more ample reasons to justify the acceptance of one of their school’s applications but not another almost identical one, they are again told simply that the second applicant ‘did not qualify under the guidelines’.

Then, when teachers ask to view the so-called guidelines, they are told that the guidelines are ‘secret’ and must remain so on the grounds that, if schools and students had access to the guidelines and hence the threshold levels of impairment needed to qualify for adjustments under NESA’s self-determined policy, then allegedly some duplicitous students would fraudulently and deliberately lower their performance to make sure that they would fall beneath the arbitrary cut-off points set out in the guidelines…in other words, to make sure that they could ‘cheat’.

When parents ring NESA to inquire as to how and why their child did not meet the guidelines, and what the child would have to show in order to succeed in meeting them, parents are told a version of the same story: “If we were to tell parents what evidence we DO need to meet the guidelines, we’re afraid that parents just might go out and get it (and compare in this connection comments about ‘cheating’ in **Part 4.2.3** above).

If an enterprising parent makes application under freedom of information legislation to view the ‘secret’ guidelines, what is produced is so heavily redacted as to be virtually meaningless, and includes no more information than is already freely available on the NESA website.

Parents report that information is also very hard to come by with respect to:

- how the NESA assessment process works,
- who the evaluators are (by qualification, not name),
- how many people review each application,
- who decides precisely how the guidelines are to be applied in individual cases, and
- how can a parent ever know for sure that their recommending professionals' reports have even been read, let alone thoughtfully considered.

Parents and teachers can thus be forgiven, in the face of such secrecy, for arriving at their own conclusions as follows: the procedure must be that virtually everyone is refused on the first application, and the only people who ever succeed are those who appeal (and appeal and appeal...) and who make a nuisance of themselves, such that it finally becomes just easier to grant the requested adjustments than to continue to deal with the tenacious parent who is constantly submitting the appeals.

## 4.5 Lack of consultation with parents

In my experience, too many education providers neglect to inform parents of their children's rights with respect to disability adjustments for classroom activities and for State tests and exams, and accordingly leave it up to parents, both to instigate applications and then, if successful, to ensure that approved adjustments are being properly implemented - **despite the fact that clearly not all parents are in a position to do this, or even to know that they need to do it.**

Parents who seek to gather information from a school, to obtain support for their child at school, and to 'enforce' their child's rights under the *Standards* are often made to feel as if they are nosy busybodies and serial nuisances.

In some schools the duty to 'consult 'with parents is virtually completely ignored.

Calls are not returned, emails go unanswered and school communications begin to be sent by post rather than by email. Sometimes the latter practice results in a situation where the event or exam which has been the subject of the communication has already taken place by the time the school's paper letter finds its way into the parent's driveway post box. It's too late to implement disability adjustments for an exam which was held last Tuesday.

Parents arrive at school meetings expecting to be having an informal chat with a teacher and perhaps one other, only to find seven school representatives sitting on the other side of a long board table – all allegedly there for the purpose of ‘helping’, but in reality attending the meeting to endorse whatever is being said by the principal. Some parents describe meetings where all the participating school representatives are never even introduced or end up talking amongst themselves while the parent sits silently, usually not comprehending all the jargon and acronyms.

Sometimes no minutes of meetings are taken. Other times minutes are taken but then are never forwarded to parents for information or approval. Disability adjustments which are agreed on during the meeting are listed on a paper but then, when the adjustments are never implemented, no one can ever account for what has ultimately happened to that paper. When minutes are indeed forwarded to parents, the meeting record bears little resemblance to what actually took place on the day. Requests for corrections to the minutes are not even acknowledged, let alone acted upon.

School meetings are regularly and quickly brought to a close by a teacher or school official being interrupted by a secretary or clerk bursting in and frantically announcing that the teacher or official must immediately leave the meeting to attend to an ‘emergency’. This invariably arises in a manner which suggests a pre-arranged in-house agreement to the effect that at X time the meeting is to be terminated - and of course this ploy is the easiest way to achieve that goal and the simplest way to make sure that the parent immediately leaves the building.

Further, any parent who for whatever reason has a history of not getting along with someone at a school (the ‘troublesome customer’, as such parents are euphemistically called) has very little chance of being consulted about anything - even if the longstanding dispute has been with simply a clerk in the school’s office rather than with a school official, and even if the dispute relates to something other than disability.

Despite a school’s:

- legislatively imposed duty to ‘consult’ with parents with respect to disability adjustments (*Standard*s, ss. 3.5 and 6.2 (2)(a)), and

- DEC-policy-imposed duty to consult with parents in the planning and implementation of disability adjustments: https://www.det.nsw.edu.au/media/downloads/about-us/how-we-operate/national-partnerships-program/every-student-every-school/learning-and-support.pdf page 8, and https://www.det.nsw.edu.au/wellbeing/about/16531_Wellbeing-Framework-for-schools_Acessible.pdf page 8, and

- general duty to "engage parents/carers in the educative process", as set out in Standard 3.7 of the *AITSL Professional Standards for Teachers*: http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list ,

in practice in our experience, parents generally have very little input into the adjustments to be introduced in the classroom and no input whatsoever into NESA applications for the HSC final exams - until after the initial application has been refused and in the context of a later appeal process – a complex procedure which depends on the production of 'new' evidence not previously submitted.

In particular, parents express disgust at the deeply shallow responses they regularly receive from their schools whenever the topic of adjustments for the HSC final exams is broached.

From any practical point of view, the days are long gone when parents could have any meaningful input into their children's initial applications to NESA for disability adjustments for HSC final exams.

Applications to NESA can now be made not by parents but rather only by schools on downloadable forms available only to schools from the NESA website. Schools must apply on behalf of their students using something called 'Schools Online' which requires a login and password so that non-teacher parents are excluded from the process. Students, not parents, sign the application form, and rarely is that form taken home first for a parent to have a look at before their (presumably minor..) child signs it.
NESA justifies this thus:

> *The application form must be submitted by your child's school as it requires specific information about the difficulties your child may experience in a classroom or examination situation. This does not mean, however, that you should not be involved in the application process.*
> http://www.boardofstudies.nsw.edu.au/disability-provisions/

But on the other hand, NESA additionally cautions schools thus:

> *It's important to discuss each student's disability provisions application with the student and to advise their parents. However, the application must be submitted electronically by the school, through Schools Online, as it requires specific information about the difficulties the student experiences in class or examinations.*

http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf - page 4

Despite the exhortation above to schools to ‘advise’ parents, and the advice to parents that they may be ‘involved’ in the process, the reality is very different.

School personnel sometimes protest to parents that the Schools Online procedure is just too complex and frustrating and ‘not worth my time’. Even some of those who have been employed by private schools to do little else (see **Part 7.5.4.1 below**) complain to parents that the procedure is tedious and complicated – they express disbelief that a busy classroom Physics teacher in a State high school could ever be expected to do the vast amounts of work involved on an occasional lunch hour.

Other schools notionally acquiesce and go through the motions of jumping through the hoops, but in a half-hearted and perfunctory way. Having failed to consult parents, they do an utterly appalling job of preparing and submitting the initial NESA application.

Children report being told to sign blank and undated Student Declaration forms, without any idea of what or why they are signing – they do it simply because an adult at school tells them to. Sometimes a student is told that they must sign such a declaration form which has been completed by someone else, but they are not afforded sufficient time to read what has been drafted on their behalf in the boxes entitled “I am assisted by this provision in the following ways:”

Many schools neglect, or expressly refuse, to show parents a copy of what they propose to send to NESA on behalf of the parent’s children. When a parent discovers later the contents of what was submitted, they are often aghast at the poor quality of the application, the numerous mistakes in spelling and grammar, and the incomplete, unsatisfactory and totally unconvincing way in which the evidence has been compiled and presented.

Similarly, professionals report that, once the parent finally does succeed in obtaining a copy of ‘what finally went to NESA’, the professional is astounded to note that the school has selectively tweezered out a few passages from the professional’s report and sent to NESA only those passages, with the result that:

- the overall impression left is far different from that intended by the authoring professional, and
- the disability adjustments which end up being applied for are quite different from what the professional had expressly recommended.

A surprising number of schools ‘forget’ or neglect to keep a copy of what has finally been submitted to NESA – or later at appeal time, claim that they seem to have no copy of the original application, cannot access one and cannot recall what exactly was in it.

Nevertheless, appeals to NESA are not entertained on the grounds that a disorganised and incompetent school has:

- ‘forgotten’ to submit an application on time, or
- failed to put enough (or any…) effort into compiling the application documents in a coherent manner in the first place, or
- ‘lost’ supporting documents, or
- ‘forgotten’ to consult parents, or
- wasted time by communicating with parents only via post instead of by email,

or on the grounds that the school’s staff member nominated to be the person responsible for NESA applications this year is perpetually ‘sick’ or ‘too busy’ or ‘on break now and can’t take this call’.

In recent years as the NESA application procedure has become more and more complex, and the ‘rules’ more and more numerous and indecipherable, private professionals dealing with NESA report an ever-increasing number of applications which in their view have been completely ‘botched’ by schools or by NESA or by both.

They note also with disdain the fact that the vast majority of parents are completely unaware of this and are all too ready to simply accept the first “NO!” from NESA and not proceed to appeal.

**At least back in the days when PARENTS masterminded the NESA applications, the students who unfairly lost out were those with incompetent parents, rather than those with incompetent schools.**

## 4.6 Lack of privacy

Some in GLD Australia report that, once their child’s disability adjustments have been approved, the child brings home a schedule with the names and surnames of **every** child in the grade or in the school who will be using adjustments, with directions on who is to report to which room and when.

If parents suggest to the school that this is a breach of confidentiality, the school usually agrees and undertakes to not do that again – and then the following exam period sends home exactly the same sheet with the same details and the same names.

Not all children with disability have disclosed to their peers the fact or nature of their disabilities, and such notices merely serve to prompt some students to then enquire, “So what’s the matter with you that you get to sit in a separate room?”

On the other hand, other parents report that their schools go to great lengths to ensure that teachers do not draw attention to a child’s disability adjustments or discuss with others the reasons why the child is entitled to them. When challenged by other students as to why a child is, for example, going to be allowed to type answers on a computer, the teacher replies simply, “Because I say so – that’s why!”

## 4.7 Lack of equity

Some parents are determined to persist in the face of rejections when they request disability adjustments for their children.

Such parents tend to be feisty, well-educated, well-informed, well-connected, articulate, thick-skinned and thoroughly skilled at making a nuisance of themselves until the professionally recommended disability adjustments are finally granted.

On the other hand, not all parents take such action.

Most parents simply don’t know what to do.

Not all belong to support groups such as GLD Australia. Some simply do not have time, or are for whatever other reason not inclined, to undertake any kind of sustained and stress-producing action.

Accordingly, in the face of initial school rejections and teachers’ expressions of reluctance to introduce disability adjustments or to apply to DEC or to NESA, these parents elect to do nothing.
Their children with disability then receive exactly that – nothing.

There seems to be no mechanism to ensure that such inequities do not occur. The squeakiest and most annoying wheels tend to succeed at obtaining the required disability adjustments for their children.

Inequities seem to be particularly pronounced in the case of parents whose first language is not English, who are low-SES or poorly educated, or who may have migrated to Australia from jurisdictions where it is considered generally unwise to ever question or appeal any kind of government decision or to otherwise draw attention to oneself.

Because joining GLD Australia is free, the parents for whom I advocate represent a very **broad spectrum**.

On the one hand, some are quite **wealthy** and can afford the very best barristers and the very best medical and other professionals. With seemingly unlimited money and unlimited time, they can and do consult multiple highly-credentialed specialists and collect numerous well-written and well-argued reports strongly recommending disability adjustments.

Such parents repeatedly prepare time-consuming, well-written and well-argued submissions. They are tenacious and end every interaction with an education provider with a subtle reminder that, “If you say no this time, I will go higher and I will go elsewhere and this is not finished.” Some of these parents have children in private schools, but some also have children in State schools.

On the other hand are those parents who rely on **Centrelink** payments and who must queue for services from medical professionals who agree to bulk bill or from other allied health professionals who work in the public sector and charge little or nothing. These parents tend to have children in State schools.

I have noticed over the years that those in the former (wealthy) category seem to succeed faster and more easily when it comes to applying for disability adjustments, and especially when lodging appeals to NESA in the face of rejections of initial applications.

This is so especially in the case of feisty parents with good written English and impressive job titles and letterheads (and names which tend to ‘google well’). These parents usually succeed – or succeed faster and with fewer appeals – while parents with none of those attributes tend to rarely if ever succeed.

I have noticed also that the more professionals’ reports a parent is able to accumulate, the better are the chances of initial success, especially when six or seven different kinds of professional are recommending the same or very similar adjustments.

**Yet in my view it is not always the case that the children of the wealthy parents are more greatly impaired by their disabilities than the children of the Centrelink-dependent parents.**

Private psychometric and disability assessments by skilled professionals can be very expensive. Some university psychology departments can administer less expensive ones but these tend to be performed by undergraduate students or interns under supervision (with of course the consequent decreased probative value which their reports then carry). Most public child and adolescent health services cannot or do not offer them.

**This patent inequity based on wealth is of great concern.**

A way needs to be found so that all children with disability can have their degree of impairment independently assessed by competent professionals on a wealth-blind and sector-blind basis.

**It should not be a contest to see who can pay for, collect and thus submit the greatest number of costly professionals' reports.**

Neither should the ultimate result depend on a school's or DEC's or NESA's subjective judgement of the parents' ability to 'go the distance' and to hire expert legal counsel who will be equipped to competently argue against the school's or DEC's or NESA's barristers if and when a case proceeds to conciliation at the HRC – or perhaps finally on to a court hearing.

# 5. Parents' responses

Some parents accept the kinds of excuses outlined in **Part 4.2** above and listed in **Appendix A**. They crumble under the pressure of continuing to negotiate with their school or with DEC or NESA - and they decide to do nothing. Undertaking such a Sisyphean task appears to be all just too hard.

Similarly, parents who have attempted to continue advocating in former years may decide to no longer pursue such avenues once they and their child have experienced reprisals at the hands of teachers or school officials in the context of the frequently-reported 'pay back' for having dared to complain about anything at school.

For example, parents report that their child's grades mysteriously begin to go down, numbers of detentions and other punishments increase without explanation, and the child experiences growing instances of being ridiculed, belittled or humiliated in front of peers or even in school assembly. Awards or prizes distributed at school assembly inexplicably cease, and parents are surprised when a child is suddenly 'dropped' from a favourite sporting team. Such parents soon learn that, in the interests of their child's future at a given school, the best solution is to simply stop all advocacy for disability adjustments.

Other parents, faced with a school's unrelenting refusals to even discuss the possibility of disability adjustments, decide to look for solutions outside the formal education system.

Some parents enrol for private tutoring or coaching or remedial programs, regardless of whether they can truly afford such interventions, and regardless of whether the program chosen is evidence-based.

Especially tragic in this context are the outcomes awaiting parents who are prompted to haemorrhage cash in the direction of all manner of expensive 'neuro-babble' programs or courses or remedies or 'cures' offered by 'edu-businesses' which are far more interested in a parent's wallet than a child's long-term improvement at school.

Parents' extreme fragility and vulnerability result in the often heard, "Well there may be no science behind it, but my hairdresser's nephew tried it and it 'worked' for him. We're desperate and we won't rest until we have tried absolutely everything."

Families with a money tree in the backyard try program after program and 'cure' after 'cure', and when nothing actually 'works' they console themselves with the thought that at least they did indeed try absolutely everything.

Families with little money on the other hand are reduced to taking all the money saved for this year's summer holiday and donating it instead to some evidence-free scam.

As well as all the wasted money, participation in such programs invariably means that, as well as coping all day at school, a tired and academically discouraged child is faced with the prospect of regular after-school attendance at a clinic or tuition centre, or evenings at home spent mindlessly performing boring computer exercise which are purportedly designed to 'rewire' the child's brain. Invariably when the interventions fail to live up to their business owner's hype, what the child learns is that, "Yet again they have tried to fix me and it didn't work. So how dumb must I be?"

On the other hand are the parents who judiciously decide not to 'look elsewhere' and who refuse to acquiesce in the face of the constant rejections they receive from education providers.

These parents deicide that in reality it is not just 'all too hard'. They resolve to take the risk that there may be vindictiveness and they decide to nevertheless pursue the matter at length with the school principal or with other senior educational administrators or with officials of DEC or NESA. If still unsuccessful, some parents go on to lodge appeal after appeal with DEC or NESA, or eventually in extreme frustration, to file a complaint with the HRC.

In virtually all the cases over the last few years in which I've helped parents in the context of appeals or complaints (in my capacity as support person, not lawyer), the school or DEC or NESA has almost always eventually reversed its initial decision as to whether a professionally recommended adjustment is 'reasonable' – either immediately after the parent appeals or lodges the complaint, and especially at or just after a HRC conciliation conference.

**Unjustifiable hardship is virtually never raised as a defence** in the context of gifted children with disability, because what their professionals are recommending (eg, rest breaks, coloured paper, homework being written up on the board as well as being assigned orally, etc) is usually simple and costs little or nothing.

Even when a case is not resolved at a HRC conciliation conference, negotiations between the parents and the school or DEC or NESA continue, and the school, DEC or NESA almost invariably finally agrees to implement the previously denied disability adjustments.

**So ultimately parents who appeal do indeed 'win' - but at what cost and stress for all parties?**

Taxpayers would be astounded to learn that they are paying the salaries of multiple staff from NESA, DEC and/or ACARA to sit for hours in HRC conciliation conferences, contributing very little. In one lengthy conciliation conference in which I was involved, the government had even sent a representative from the government insurance office for the sole purpose of 'making sure that the solicitor representing the education department doesn't agree to pay anyone any money' – how much did that cost? Could that not have been equally well accomplished by an email to said solicitor in advance?

**Could all the taxpayers' money currently devoted to fighting with parents not be better spent training teachers to meet the needs of students with disability in their classrooms – or to reforming the time-consuming NESA application procedures for the HSC final exams?**

The schools or DEC or NESA or ACARA in these cases were not 'forced' by the HRC to approve or implement the disability adjustments (as it is not the role of the HRC to **tell** the parties what to do).
Rather, in each case it became increasingly evident to all parties that what had been professionally recommended for the child:

- was actually eminently 'reasonable',
- would not constitute unjustifiable hardship for the school, for DEC or for NESA or for ACARA,
- would not advantage the applicant child,
- would not disadvantage anyone else,
- would not interfere with the integrity of the exam (*Standards*, s 3.4 (3)) for which the adjustment had been recommended, and
- simply should have been approved in the first place with no arguing and no fuss.

In the vast majority of cases with which I am familiar, the disability adjustments being applied for were pathetically simple (something as time-consuming as enlarging a photocopy of an exam paper so that a child with a documented vision issue could actually **see** it), and in each case the school, DEC or NESA ended up looking a tad foolish. No building of expensive ramps or lifts or extra anything, just enlarging a photocopy….

Although the HRC complaints avenue usually leads to success for that applicant, *quaere* how many other children with disability can benefit from a positive HRC conciliation outcome, because after a conciliation conference, the parent is almost always, as far as I know, required to enter into a confidentiality agreement, and from that moment on, is precluded from telling anyone, including me, the details of the resolution.

# 6. When disability adjustments are notionally granted

Sometimes, after a parent has appealed a negative decision or has made it clear that they are aware of their child's entitlements under the *DDA* and the *Standards*, after a few days the requested disability adjustment seemingly miraculously appears on the child's desk or is otherwise furnished by a school without comment.

However, even when disability adjustments are notionally granted, **often the adjustment is short-lived**, and it is eventually forgotten or quietly withdrawn after a brief time, usually without consultation with the parents. Parents are disappointed and angry when they discover that, despite all their stressful advocacy, the approved disability adjustments are not being implemented in any sustained or continuing fashion.

In some cases, the adjustments are implemented properly for one year, but then the parent finds that every January they must begin the whole tedious and stressful process all over again with new teachers.

If the former year's teacher has left the school, parents are sometimes told, "Oh no, Mrs XYZ would have never allowed him to use a computer or have extra time – that would never happen here - you must be mistaken!"

Sometimes when the requested disability adjustments are notionally approved, a formal ILP/IEP/ISP/PLP/ICP etc is drafted and negotiated and signed off on.

However parents often report that, after a short time, the official 'plan' is put into a drawer, never implemented in any meaningful way and ultimately forgotten. The disability adjustments listed in the plan are not sustained. When teachers are asked about this, they invariably say that they were finding the plan 'too complicated and too hard to implement'.

Rarely is the ILP, etc passed from Year to Year and from teacher to teacher as the child progresses through school.

Still in other cases, the disability adjustments are initially granted without argument but then their implementation is made conditional upon the child improving their ‘behaviour’ before being entitled to use them. This reflects a view that disability adjustments constitute some kind of reward or favour or privilege, when in fact it may well be the case that the child’s challenging ‘behaviour’ is being caused in the first place by the disability, and may disappear or markedly improve once the disability is being properly addressed and supported.

**Appendix B** lists some of the excuses given by schools as to why previously approved disability adjustments are no longer being implemented.

# 7. Lived experiences

This **Part** is devoted to examples of children’s and parents’ experiences in applying for and using disability adjustments, in mixed-ability settings, in select-entry school settings and in HSC final exams.

Examples of the issues described in the following **Parts** are set out in **Appendices C to F**, but it is worth noting that these constitute just a sprinkling of such instances – the root problems are being perpetuated and the instances are being repeated year after year with very little or no improvement being noticed by those of us working or volunteering in the field.

## 7.1 Lived experiences – children in mixed-ability settings

I am regularly contacted by parents who claim that their children with disability have experienced one or more of the events described in **Appendix C.**

Daily interactions such as these suggest that serious attention needs to be paid to the possible cause of the allegedly rising statistics with respect to mental health disorders in schools.

Psychologists regularly point to the particularly poor outcomes which may be expected for gifted children with disability who are forced to cope for years with the fact that neither their gifted needs nor their disability needs are being met in the classroom.

## 7.2 Lived experiences – parents of children in mixed-ability settings

I am regularly contacted by parents who claim that they have experienced one or more of the events listed in **Appendix D.**

It is arguable, I submit, that at least some of the examples in **Appendix D** constitute victimisation, contrary to s. 42 of the *DDA* and s. 8.3 of the *Standards*.

Yet such interactions between school officials and parents tend to be generally oral rather than written, and hence create evidentiary barriers for parents wishing to rely on the legislative victimisation provisions.

One parent drew a school's attention to the relevant victimisation provisions and was told simply, "So try proving that I ever really said it."

Section 8.3 of the *Standards* imposes onerous obligations on education providers with respect to victimisation of parents who suggest or hint that they are thinking of taking action under the *Standards* for the purpose of obtaining disability adjustments for their children with disability.

This highlights the urgent need for training of all teachers and other school officials who are called on to meet with advocating parents.

In these days of unobtrusively recording oral interactions on mobile phones, I foresee that the day will come when a parent WILL indeed be able to 'prove that it was really said'.

## 7.3 Lived experiences – applicants for select-entry schools, programs or classes

**Appendix E** lists some of the excuses proffered by school officials and education departments to justify a refusal to implement professionally recommended disability adjustments for entrance tests for select-entry schools, programs or classes.

Some DEC websites concerning such entrance tests sometimes purport to impose a blanket prohibition on the possibility of certain kinds of disability adjustments for all applicants (see **Part 4.2.7** above with respect to the possibility that this practice arguably runs contrary to s. 44 of the *DDA*), regardless of the severity of disability or level of impairment, and in seeming breach of the parent consultation requirements in the *Standards.*

Failure to grant disability adjustments to gifted children in this context arguably results in the exclusion of many gifted children with disability from select-entry schools, programs and classes, even though the research literature overwhelmingly notes the need for such children to be treated as ‘gifted first’ and to be kept in a large cluster of their IQ peers and be provided with appropriately challenging academic work, despite not yet achieving good grades.

In some cases, the emotional damage resulting from such refusals can be immeasurable. The gifted child with disability is forced to witness the acceptance of classmates who have regularly scored lower on in-class assessments or who have invariably taken longer to understand new class work.

This can be soul-destroying. The gifted child is humiliated when constantly asked by classmates why they are not going into the select-entry class or why they are not proceeding on to the select-entry high school, and when having to admit over and over that, despite their heretofore high grades on untimed assessments, they ‘failed’ the strictly limited-time entrance test.

## 7.4 Lived experiences – children already enrolled in select-entry schools, programs or classes

**Appendix F** lists excuses proffered by teachers and school officials to parents of gifted children with disability who are already enrolled in select-entry schools, programs or classes to justify a refusal to implement previously approved disability adjustments.

Again, these excuses reveal a very limited understanding of disability and of educators’ obligations under the *Standards*.

## 7.5 Lived experiences – students sitting Year 12 HSC final exams

As noted numerous times above in the context of the HSC finals exams, most disability adjustments for such exams may not be granted solely by a child’s school, but instead require a formal application to NESA for approval before the exams begin under a procedure described on the NESA website: http://www.boardofstudies.nsw.edu.au/disability-provisions/ and http://ace.bostes.nsw.edu.au/disability-provisions .

This **Part 7.5** deals with some aspects of that application process which have not been canvassed elsewhere in this submission and which have proved difficult for **all** Year 12 students with disability, but in some cases especially arduous for **gifted** Year 12 students with disability.

Attention is focused on parents' experiences with respect to the capricious, draconian, inconsistent and shambolic way in which that NESA disability adjustments policy is currently being implemented.

The links above attest to the way in which the NESA HSC disability adjustments program is **supposed** to operate. The websites leave the impression that the program is being implemented in an equitable and considered manner.

Experience belies this impression.

## 7.5.1 The NESA website rhetoric

Numerous documents on the NESA general website contain all manner of aspirational statements about the importance of providing adjustments to students with disability (see for example: http://syllabus.bostes.nsw.edu.au/adjustments/ and http://syllabus.bostes.nsw.edu.au/assessment-and-reporting/ and http://syllabus.bostes.nsw.edu.au/support-materials/adjustments-for-students-with-special-education-needs/), together with hollow undertakings with respect to how students are to be fairly assessed.

Examples include [*emphasis* mine]:

- BOSTES is committed to inclusivity and demonstrates this by … providing *all students with opportunities to … demonstrate achievement* http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-values.html

- Material produced by the Board of Studies NSW will promote the values of excellence from an equity perspective by … modelling *valid and reliable assessment practices that … are accessible to every student* http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-equity-principles.html

- Material produced by the Board of Studies NSW will promote the values of respect and responsibility from an equity perspective by … *ensuring that assessment practices enable students to achieve success by demonstrating their level of capability* http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-equity-principles.html

- Material produced by the Board of Studies NSW will promote the values of respect and responsibility from an equity perspective by … supporting teachers to design *valid and reliable assessment activities which allow the full range of students to demonstrate achievement in a variety of ways* http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-equity-principles.html

- Material produced by the Board of Studies NSW will promote the value of inclusivity from an equity perspective by … providing a *variety of assessment strategies to cater for the needs of the full range of students, and opportunities for the demonstration of achievement in a variety of ways* http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-equity-principles.html

Such laudable proclamations nevertheless fail to inform the procedures and practices adopted by NESA and by schools in the context of disability adjustments for HSC final exams.

NESA's objectives above all sound wonderful.

Experience tells a different tale, as explained elsewhere in this submission.

The reality is that for some students with disability, adequate disability adjustments for the HSC are notoriously difficult to come by.

Indeed, sometimes even Year 12 students with the most visible and patently debilitating impairments have had trouble obtaining NESA's approval for the adjustments: http://www.youtube.com/watch?v=bwOk1GQhz9o&feature=youtu.be at circa 1:15 – 2:00.

I have advised a variety of parents who have furnished to NESA a file containing professionals' reports on a Year 12 child's disabilities dating back to age 6 or 7, and still the child's initial application for HSC disability adjustments has been refused.

### 7.5.2 "Show us how you can fail first"

As part of the NESA application process, schools must carry out their own testing of the student's performance on in-school assessments.
Schools are told:

> *You must submit two extended responses/essays and at least one of these must be from an assessment task*: 6th FAQ here: http://www.boardofstudies.nsw.edu.au/disability-provisions/faq-schools.html and page 4 here: http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf

The two essays must be written without disability adjustments (eg, no extra time and in handwriting, no matter what level of impairment has been documented in the child's professionals' reports, and no matter what disability adjustments the child is accustomed to using in the classroom and for in-school exams).

At least one such essay must be something which 'counts' towards the student's final HSC grade (and hence ATAR) - presumably to control for the possibility that some students would duplicitously write very little or purposely put in a substandard effort in the hopes of obtaining an 'advantage'.

**This process is tantamount to testing a child with low vision without their glasses, and then if they fail the test, giving the glasses back to the child – but still 'counting' the first attempt and its resulting poor mark towards the child's final grade.**
By failing on the in-school assessments, the child is seen as 'proving' that they do indeed have a disability and are in need of their professionally recommended disability adjustments.

However, the effect on the academic self-concept and self-esteem of a very clever and usually high-achieving child does not figure in the thinking behind this cruel 'show us how you can fail first' process.

By way of comparison and example, the United States Department of Justice regulations (http://www.ada.gov/regs2014/testing_accommodations.pdf which are made in the context of disability discrimination legislation similar to Australia's) provide expressly that a candidate need not be failing to qualify for adjustments, and indeed that a 'person with a history of academic success may still be a person with a disability who is entitled to' disability adjustments (page 3).

In the United Sates a child with disability need not "show us how you can fail first".

A slightly more technical/legalistic argument regarding the 'fail first' practice is this:
Since one of the 'prove you will fail' in-school assessments must 'count' towards the child's final HSC grade, presumably that assessment constitutes part of the child's education for purposes of ss. 3.3 (a) and 6.2

(1) of the *Standards* (ie, it is not a separate assessment administered solely for diagnostic purposes).

Consequently, how can NESA justify imposing a blanket prohibition on all disability adjustments for **that** 'show us how you can fail' assessment without considering the 'reasonableness' of the child's recommended adjustments and without meeting NESA's other obligations under the *Standards* to allow a child with disability to 'participate' in their education **on the same basis** as a child without disability?

Clearly if the resulting grade 'counts', then presumably that assessment constitutes part of the child's participation in their 'course or program' (*Standards*, s. 6.2 (1)), and accordingly denying disability adjustments for that task could arguably be considered unlawful.

### 7.5.3 Schools' dissatisfaction with the NESA system

Even school leaders and teachers regularly and publicly express great dissatisfaction with what they regard as the inequitable way in which NESA is implementing its program for disability adjustments for HSC final exams. Teachers and school counsellors allege publicly that they are expected to gather the necessary evidence and submit cogent applications to NESA:

- without having ever been trained in how to do that, and
- without being released from face-to-face teaching responsibilities to allow for enough time to direct their attention to learning how to complete and submit NESA the forms properly.

Some report that they are reduced to undertaking it at home on weekends and after a few years are tired of doing that.

As noted in **Parts 4.1 and 4.2** above, school personnel marvel at what they view as inexplicable discrepancies between the ways in which students at the same school are treated by NESA.

One teacher who attended a public learning disabilities association seminar on how to interpret IQ tests announced to the audience that she had enrolled in the seminar chiefly in order to learn 'how to better fight with BOSTES [now NESA]'.

Another teacher in a public forum complained that every time she rang NESA for advice with respect to disability adjustments, she received a different answer.

Other teachers have asserted publicly that they can ring NESA three days in a row and speak to three different people and get three different answers to the same question. Said one in front of a public audience, “It seems to me as if NESA’s policy is independently determined by whoever happens to be walking past when a phone rings.”

This is clearly beyond ridiculous.

Such seeming inconsistencies between what NESA **says** (see **Part 7.5.1** above) and what NESA **does** have served to damage the reputation of NESA and do not go unnoticed by teachers or parents.

In my view they contribute to the repeated belittling and ridiculing of NESA in public forums in Sydney (eg, public meetings and conferences of teachers and/or parents). In my experience, the more that teachers or parents compare experiences in public meetings and find that everyone has been told something completely different, the more laughter erupts in the audience, and the more disrespect is directed at this seemingly shambolic NESA program for disability adjustments for the HSC final exams.

## 7.5.4 The NESA system disadvantages NSW candidates applying to university vis-a-vis applicants from other jurisdictions

### 7.5.4.1 by offering such stingy adjustments compared to other jurisdictions

Parents across Australia report that there is little consistency among NESA and the various other State testing administration authorities with respect to their policies on disability adjustments for Year 12 final exams.
Some States offer very generous adjustments for Year 12 final exams with decisions being made on a case-by-case basis by individual principals who personally know the applicant child and the history of the disability and its long-term effects on the child’s exam performances at school.

Such principals have complete discretion as to which disability adjustments they will and will not approve, and anecdotally, if a highly-credentialed professional has recommended a particular adjustment and provided cogent medical or other evidence in support of that recommendation, such principals will tend to simply approve that adjustment without entering into a bitter conflict with the parents or with the recommending professional.

Other States, such as NSW via NESA, offer comparatively stingy adjustments, with decisions being made by seemingly untrained staff according to confidential unpublished guidelines and with limited publicity about how such decisions can be appealed.

Parents and schools report that in recent years NESA's guidelines for disability adjustments for HSC final exams are being applied in an increasingly stringent and miserly manner. For example, 1134 students were granted extra time in 2012 but by 2015 that number had fallen to 333: http://www.boardofstudies.nsw.edu.au/disability-provisions/2012-2015-stats-freq-dist.html .

It's been suggested that this 'tightening up' constitutes NESA's knee-jerk response to the annual Sydney January festival of biased and ill-informed media coverage of last year's HSC students who have received disability adjustments and the kinds of schools in which they were enrolled.

These sensationalised media stories invariably contain copious unfounded and evidence-free assertions to the effect that children attending private schools receive preference over than those attending State schools (sometimes with a distinct subtext of 'private schools are cheating'). The assertion is made that private schools delight in rorting the system and claiming disability adjustments for students who are not in reality entitled to receive them.

However, little consideration is given to the reasons why such children may have been enrolled at such private schools in the first place (eg, extra remediation and understanding, better pastoral care, and more expert support for the disabilities), or the fact that the private schools in question simply take the ever-increasingly rigorous and complex NESA application procedure more seriously, and allow their staff sufficient time to prepare and submit applications effectively. Some reportedly employ a person part- or full-time to do little else.
Further, it is in the interests of private schools to enable as many of their students as possible to accurately show on their HSC exams what they have learned and what they can do. Year 12 results and percentages of high ATARs are invariably used by private schools for the purpose of marketing and advertising what is, after all, a business. State schools on the other hand are under no such pressure to maximise the number of high ATARs as they are not competing for fees with a school down the road.

Clearly the answer to the disparity in the proportion of private and government school students qualifying for adjustments would be not to deny the former their legal entitlements, but rather to facilitate more applications from government schools whose students meet the qualifying criteria. It is possible that many students do not apply for disability adjustments due to the expense of diagnosis or the lack of awareness around the importance of introducing adjustments in the first place. This is an issue for NESA, not the private school sector.

Further, in fact, in the face of the media's unsubstantiated allegations with respect to NESA's approval practices, investigation after investigation since 2009 (http://www.boardofstudies.nsw.edu.au/disability-provisions/reports.html ) has revealed that NESA is **not** indeed allowing some kinds of schools to 'cheat' at the expense of other kinds of schools.

It is particularly unfortunate then that NESA has succumbed to the pressure emanating from the misleading media reports and has consequently 'tightened up' year after year, with the result that by now, compared to NSW, other Australian jurisdictions seem to be working from comparatively generous and flexible guidelines.

For example, the guidelines set down by both the Queensland Curriculum and Assessment Authority for the QCS Test (currently the only Year 12 State test in Queensland) (http://www.qsa.qld.edu.au/2132.html and http://www.qsa.qld.edu.au/1102.html) and the International Baccalaureate ('**IB**') (http://switzerland.tasis.com/uploaded/documents/PDF_Academics/IB_14/Candidates_with_assessment_access_requirements.pdf) are seemingly much more generous, especially in the case of the IB.

I am told, but do not know, that the IB disability adjustments guidelines are the result of American parents over the years lobbying for fairer provisions under the USA disability legislation. Every year Australian IB students benefit from these generous IB guidelines, because all IB students write the same world-wide Year 12 final exams and are granted disability adjustments pursuant to the same policy. Even in NSW their applications do not go to NESA.

Children with disability in some Australian jurisdictions such as NSW, which have not been the target of years of such parental lobbying, are disadvantaged vis-a–vis their peers who are enrolled in Queensland or the IB system.

For example, students with disability who complete Year 12 with generous disability adjustments then **take their resulting ATARs into the market and compete for university places** with applicants who have completed Year 12 under the far stricter and harsher rules imposed by NESA in NSW.

Obviously, such students with disability in the latter category are thereby disadvantaged vis-a-vis students in the former.
How many NSW HSC graduates are actually missing out on their first choice of university course because the places have already been filled by students with disability from a State or IB system which had far more generous disability adjustments?

## 7.5.4.2 by ensuring that not all eligible students with disability will apply

In one of its own publications (https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwinm6b9i4PLAhVCHpQKHf_QCZYQFggyMAM&url=http%3A%2F%2Fwww.nswteachers.nsw.edu.au%2FDownloadDocument.ashx%3FDocumentID%3D1242&usg=AFQjCNEQVPaTRyNZ77EGCti_TtxXlmos0g&sig2=xPeipmmEuTg17lBV281doA NESA expressly accepts the DEC statistics that there are [**emphasis** mine]:

> *...over **100,000** children with disabilities in NSW schools. This figure, which includes State, Catholic and Independent Schools, is based on the estimation by NSW Department of Education and Communities (DEC) that approximately 90,000 (**12%**) students who have additional learning and support needs (ie disability, learning difficulty or behaviour support needs) are enrolled in more than 2200 NSW public schools. This includes the full range of students who need adjustments to access and participate in learning under the Disability Standards for Education 2005. Included are 35,000 (4.7%) students who are currently confirmed as having a disability (against the Department's criteria for specialist services: intellectual, physical, hearing, vision, mental health, autism), and a further 55,000 students with additional learning and support needs relating to difficulties in learning or behaviour (including dyslexia, reading and/or communication delay and ADHD) (Every Student, Every School, 2010).* (page 5)

Are anywhere near 12% of students in Year 12 granted disability adjustments for their HSC final exams?

According to its own statistics (http://www.boardofstudies.nsw.edu.au/disability-provisions/statistics.html NESA claims that almost 100 schools submit no applications whatsoever: http://www.boardofstudies.nsw.edu.au/disability-provisions/disability-provision-schools.html.

Could roughly 12% of NSW schools really have no students with disability at all?

Of course it may be that some small or specialised schools have only a handful of students in Year 12 in a given year, and for that year happen to have no students with disability amongst them. But 12% of schools?

And of the approximately 73,000 students who sat the HSC in 2014, **9.2%** submitted an application for disability adjustments:

http://www.boardofstudies.nsw.edu.au/disability-provisions/disability-provision-students.html . Where were the other 2.8% (ie, circa 2000 students)?

And assuming that NESA's and DEC's figures are correct, and that **12%** of all students have a disability or learning support need, (but *quaere* even that assumption in light of the figures which are gradually trickling out from the NCCD exercise: https://au.news.yahoo.com/nsw/a/31081573/school-disability-funding-in-crisis-union/ and http://www.theaustralian.com.au/national-affairs/education/one-in-five-students-has-a-disability-confidential-data/news-story/a3b1360c2185890344aa79e7f9097c73 which suggest that that figure is perhaps closer to **20%**), why in 2014 did 6672 students apply for disability adjustments when statistically that number should have been closer to 8700?

Assuming again that the 12% figure is correct, then it follows that 12% of voters, and 12% of passengers in every public bus, and 12% of the population as a whole have a disability.

Why then is not at least 12% of education students' time at university currently being devoted to training future teachers in how to meet the needs of this 12% of the population in their classrooms?

And again, how many NSW candidates with disability are being disadvantaged in the ATAR contest by virtue of the fact that not all 12% in NSW apply for or obtain approval for disability adjustments for HSC final exams?

#### 7.5.4.3 by introducing stricter new 'rules' for 2016 and 2017

Several of us who are working or volunteering in the field have noted with some alarm that NESA has recently introduced seemingly ad hoc new 'rules' for 2016 and 2017, such rules appearing to be designed to further limit the number of successful applications. We are being told that some such 'rules' are being communicated to parents by telephone.

One concerning and consummate example relates to multiple reports that parents of children who have applied for a computer but have been granted a scribe instead (even though the child who has never used a scribe and has not applied for one) are, without prior consultation, being told that computers are now approved only for a child who is **unable to speak** (and hence unable to dictate to a scribe).

Parents whose children can indeed speak are thus being pressured to accept the scribe and to not keep appealing to obtain approval for a computer.

This development is of course greeted with derision by private psychologists who have been submitting reports to NESA for years and have indeed in the past managed to have a computer approved for children who are able to speak – indeed, sometimes for children who are quite articulate and able to speak very well.

Similarly, concern has been expressed both by professionals and by schools about the 2017 NESA medical form which must be completed by private professionals to attest to a child's disability and need for adjustments.

The form now asks for a DSM-5 or ICD-10 code for whatever disability is being diagnosed, leaving the impression that disabilities not listed in those classification manuals may no longer, as a matter of policy, be allowed to qualify – though neither the *DDA* nor the *Standards* speak in terms of DSM or ICD codes, and some disabilities (eg, physical, vision) do not have codes. Professionals express concern that any application made on the grounds of a disability which has not yet entered the official diagnostic nomenclature will be summarily dismissed.

Further, the medical form now also asks for "details of what therapies the student is undertaking for this condition, including the type of therapy, duration, and the practitioner with whom the therapy is being undertaken", as well as information about any medicines which the child is taking to address the disability.

Similarly, a letter sent to all Learning and Support Teachers in late 2016 advised that, with respect to an anxiety disorder for example, "Applications are likely to be declined unless the student has first undertaken treatment or therapy. If treatment has not adequately addressed the issues, only then should provisions be sought…".

This request for information about what the child is swallowing and what therapies the child is pursuing to manage their disabilities has caused parents and professionals to wonder:

- will the next NESA justification be, "Well you're not undertaking any therapy or doing anything to help yourself, so why should we help you?", and
- who is supposed to be paying for such private therapy in the case of children from low SES families, and
- will evidence from a school as to a family's financial situation be accepted to 'excuse' a child who has not, for whatever reason, enrolled for such therapy.

Perhaps parents will now be told simply, “Well if your child had poor vision and needed prescription glasses which you couldn’t afford or chose not to buy, then we wouldn’t pay for the glasses and we wouldn’t approve disability adjustments on the grounds of poor vision, because there is something you could do to help your child and you’re not doing it. So by the same token, if your child has an anxiety disorder, not only will we not pay for the required therapy, but we will also not provide the disability adjustments needed to address the disorder, because there is something you could do to help your child and you’re not doing it.”

# 8. Some proposed solutions

Children are not in a position to give or withhold consent with respect to the teaching and learning experiences which are imposed upon them in their classrooms. Usually, and especially in the State sector, their parents are not either.

Accordingly, in the disability context, it is the responsibility of others to highlight practices which do not allow children with disability to participate, as far as possible, in their education **on the same basis** as students without disability, and to suggest possible solutions to the problems engendered by the continuing adoption of such counter-productive practices.

Clearly both teachers and parents need to be better informed about their obligations and entitlements under the *DDA* and the *Standards*. In addition, consideration should be given to introducing measures to eliminate, or at least to decrease, the need for disability adjustments in the first place.

This **Part 8** suggests some possible solutions to address the problems canvassed above and perhaps to lead the conversation going forward.

## 8.1 Introduce mandatory teacher training on disabilities and disability adjustments: in-service

In my experience, **the vast majority of teachers do the very best they can for most children most of the time.**

Teachers are generally well-intentioned and have chosen teaching largely because they like children, and they seek to exert a positive influence on children’s lives.

Especially in the case of patent visible physical disability, malformation or disfigurement, the vast majority of teachers will usually do all they possibly can to assist the child.

Problems normally arise when:

- the child's disability is invisible, or
- the child is patently either very clever or of above-average ability, or
- the child does not appear to be failing or otherwise underachieving.

Despite teachers' generally good intentions and willingness to respond to the needs of children with visible disability, GLD Australia anecdata suggest that most primary and secondary teachers have not been formally trained in disabilities – how to identify them in the classroom and how to address them.

Too many teachers are not familiar with disability literature or with federal or state legislation addressing disability, and they are generally unable to read and interpret professionals' reports.

When I lecture on gifted children with disability to teachers in schools and at the university level to teacher trainees who are about to graduate and become teachers, virtually none claims:

- to have ever had any formal training whatsoever in disability, or
- to have any confidence in their preparedness to meet the needs of students with disability in the classroom, or
- to have acquired any familiarity with disability legislation or policy.

This is remarkable in light of Standards 1.6 and 7.2 of the *Australian Professional Standards for Teachers* prescribed by the Australian Institute for Teaching and School Leadership Limited ('**AITSL**'), under which even new graduate teachers are supposed to [**emphasis** mine]:

- 1.6 Demonstrate broad knowledge and understanding of **legislative** requirements and teaching strategies that support participation and learning of students with disability, and

- 7.2 Understand the relevant **legislative**, administrative and organisational policies and processes required for teachers according to school stage.

Many educators still erroneously claim to believe that 'learning disability' is simply a euphemism for low IQ or intellectual impairment.

Others hold that children with disability fall exclusively within the province of teacher aides, and should not be the responsibility of fully qualified teachers (ie, that the children with the greatest learning needs are best taught by the adults with the least training).

When I was invited to give evidence in Canberra before the 2015 Parliamentary Review of the *Standards*, the one point agreed on by all participants from all jurisdictions and representing all forms of disability was that **teachers in general, while well-intentioned, have simply not received the training about disability and diversity which they require to cope in today's policy-dictated 'inclusive' classroom.**

When teachers seem to, or profess to, know nothing about the *Standards* and their obligations under them, parents tend to resort to printing policies and other documents off the websites of departments of education and presenting them to schools to support the parent's argument that disability adjustments are arguably an entitlement, not a privilege or a favour.

Examples include:

**Queensland**: *Reasonable Adjustment in teaching, learning and assessment for learners with a disability: A guide for VET practitioners* https://training.qld.gov.au/site/providers/Documents/inclusive/disability/reasonable-adjustment-for-web.pdf

**WA**: *Reasonable Adjustment: a guide to working with students with disability* http://www.adcet.edu.au/resource/8966/reasonable-adjustment-a-guide-to-working-with-students-with-disability/

As noted in **Part 7.5.1** above, such documents tend to pay lip service to the *Standards*, but fall down in the implementation.
For example in NSW, NESA coordinates the implementation of the NSW Government's *Great Teaching, Inspired Learning: A Blueprint for Action* across all NSW schools*.* This document used to be available in the form of a 20-page paper booklet dated March 2013 (of which I have a saved copy), but now seems to be available only as a website rather than as a printable document: (http://www.nswteachers.nsw.edu.au/great-teaching-inspired-learning/blueprint-for-action/ ) ('**Blueprint**')

The Blueprint sets out recommended actions allegedly required to improve the selection of candidates for teacher training and to improve the university training given to the students so selected. The Blueprint claims to intend "to ensure that every NSW student in every school and in every lesson is inspired to learn by *great teachers* and *great teaching*" (page 6 of the paper booklet).

In light of such a lofty and commendable ideal, it is strange then that a search of the terms 'disability' and 'special needs' in both the paper document and the website reveals that, for some inexplicable reason, the Blueprint makes no mention of 'great teachers' or 'great teaching' in the **context of students with disability.** Surely students with disability will require both? And surely teacher trainees will require instruction in teaching students with disabilities?

If complying with the *Standards* is supposed to be such a high priority for teachers, why does this NESA Blueprint remain silent when it comes to disability?

To the rescue comes another NESA document called *Classroom Management and Students with Special Educational Needs* http://www.nswteachers.nsw.edu.au/publications-policies-resources/resources/reports/ (fifth report in list).

This document admits that university training of teachers realistically can't be expected to accomplish this objective because: "…*given the diverse range of students with special needs who are now enrolled in mainstream schools, it is highly unlikely that graduating teachers can be prepared with sufficient knowledge to cater for all of the students with special needs they will encounter in their first classrooms*" (page 24).
Instead, advises the same document, the training must be undertaken once the graduates are already teaching in schools: "…*classroom teachers (whether beginning or experienced) need systemic support to address the very difficult and complex task of catering for children who have special needs … Teacher education students once having entered the workforce must be supported by ongoing professional development, specialist staff expertise, assessment and classroom resources and guidance and direction in ways to address learning and support in their classrooms"* (page 24).

Admittedly, DEC is starting now to offer online training courses for its teachers on disability and on disability adjustments, and this is of course a laudable initiative.

Such training, however, remains merely **optional** and accordingly is completed by relatively few teachers.
**As long as the training is voluntary rather than mandatory, the vast majority of teachers and school leaders will continue with the, "Oh no, we don't bother with that here…" stance.**

No one raises such nebulous objections when the subject matter of DEC teacher training is fire drills, child protection, peanut allergies, CPR, asthma or asbestos. Everyone takes these topics seriously because the training addressing them is not optional but obligatory – consequently a sign that DEC itself takes these topics seriously.

This is the result which we require for in-service teacher training on disability.

And of course from a wider perspective, systemic training is needed for all teachers and school leaders, not only on the *Standards*, but also on the importance of identifying **gifted** children with disability early in their primary schooling.

Teachers need to be introduced to current evidence-based material which is easily obtainable and which can be revisited on an ongoing basis – perhaps by means of regularly up-dated and well-publicised websites. Such websites might link to short films or clips showcasing the challenges faced by gifted students with disability in a way which engenders teachers' empathy and prompts motivation to learn more.

Early identification of all learners with disability would prevent the inception of the self-fulfilling cycle of poor academic self-concept, low self-esteem, learned helplessness, and ingrained underachievement or failure in the early years, all of which contribute to sometimes insurmountable and irremediable problems in later years.

Perhaps information about disability and about the *Standards* could also be included in some sort of in-service journal designed for early-career teachers – for example http://download.cnet.com/Pigeonhole-Magazine-for-new-graduate-and-early-career-secondary-and-high-school-teachers/3000-20415_4-76058487.html .

Finally, as discussed in **Part 7.5.4.2** above, DEC statistics estimate that approximately **12%** of students may be expected to have some sort of disability or learning and support need, yet when it comes to disability adjustments, how many schools actually provide them to anywhere near 12% of their students? One suburban primary school with an enrolment of 450 had a total of 3 students using disability adjustments for NAPLAN (one of whom had a broken arm) – where were the other 51?

Teachers cannot be blamed for neglecting to notice the 12% of students whom they have never been trained to identify in the first place.

## 8.2 Introduce mandatory teacher training on disabilities and disability adjustments: pre-service

Consideration should be given also to finding a way that teacher training on disability adjustments could be made compulsory in teachers' pre-service education while still at university.

If a Minister of Education can 'order' all universities to teach phonics (cf: http://www.dailytelegraph.com.au/news/nsw/education-minister-orders-universities-to-teach-phonics-or-face-losing-accreditation/story-fni0cx12-1227019125456 ) as a pre-condition to maintaining accreditation, could such a decree not also be made in the case of training on disability and on disability adjustments? This would relieve DEC of the responsibility of having to train all new teachers from scratch once they are hired and are already working in a school.

In this connection, DEC could explore the possibility of telling NESA (its teacher accreditation body) that, as from X date, DEC will no longer be hiring teachers who have not completed university training on disability and on the legislation and policies governing it.

This was reportedly done once before by DEC in the 80s or 90s, and suddenly all the universities purportedly started introducing compulsory courses in disability.

As a matter of practicality, universities will agree to teach courses in whatever they're told to (witness compulsory Aboriginal sensitisation courses) because they want to be able to say to their applicants, "When you finish this degree, you'll be qualified to teach in [name of State]" - so why not courses on disability and the *Standards*?

## 8.3 Introduce a phone advisory line for schools

Another way of providing teachers and principals with practical advice on the *Standards* would be for DEC and NESA to offer some kind of anonymous information/advice/help line for school staff to ring when they are reluctant to admit to DEC or NESA, or in front of their peers, or in front of parents, that they don't know what a disability adjustment looks like or that they don't know what their obligations are under:

- the *DDA* or the *Standards*, or
- the DEC code of conduct, or
- the AITSL *Professional Standards for Teachers* - see 1.6 of: http://www.aitsl.edu.au/australian-professional-standards-for-teachers/standards/list (ie, to know about, and to abide by, legislation and departmental policies),

and when they don't know how to even begin to prepare and submit a coherent NESA application for NAPLAN or the HSC final exams.

As new fact situations arise, DEC or NESA lawyers could immediately explain to school decision makers in advance why what they may be proposing to do or say would in fact be unlawful under the *DDA* or the *Standards* and/or contrary to publicly available NESA guidelines. Such an option would allow educators to 'save face' by not inadvertently proffering misleading or incorrect advice to parents and students, and then being obliged to sheepishly retract it afterwards.

## 8.4 Provide notices to parents about disability adjustments

Perhaps DEC could organise for each State high school to regularly include in its parent newsletter some kind of notice about the availability of HSC disability adjustments and who to contact to enquire about them.
This could be supported by a separate paper notice or flyer or brochure to be taken home by each child and/or distributed at parent/teacher interviews.

One member of GLD Australia lobbied to have the following notice inserted in her child's DEC high school newsletter:

> *DISABILITY PROVISIONS FOR THE HIGHER SCHOOL CERTIFICATE EXAMINATIONS: Disability provisions in the HSC are practical arrangements designed to help students who could not otherwise make a fair attempt to show what they know in an exam room. The provisions granted are solely determined by how the student's exam performance is affected and may include braille papers, large-print papers, use of a reader and/or writer, extra time or rest breaks. Further information on Disability Provisions may be found on the Board of Studies NSW website* http://www.boardofstudies.nsw.edu.au/disability-provisions/ *. If you wish to apply for Disability provisions for your son or daughter, please contact …*

Of course, this notice could be re-drafted for disability adjustments for tests and assessments other than the HSC final exams, using appropriate wording which would allow parents to immediately decide if this is something which they might need to further investigate for their child.
DEC could also take steps to ensure that each individual State school website contains consistent and useful information about disability and the *DDA* and the *Standards* in a way which is easy for parents to access (for example, a clearly visible tab on the home page, rather than a buried page embedded under several sub-topics in multiple drop-down menus).

Some other jurisdictions' departments of education already have online newsletters for parents, and these could also incorporate such information.

Examples include:
**Queensland:**
http://www.vision6.com.au/em/mail/view.php?id=1785502378&a=684&k=aae3435

**Western Australia:**
https://apps.det.wa.edu.au/newsletter/public/pn/archive.html?edition_id=29

## 8.5 Seek legal advice with respect to the rhetoric on the DEC and NESA websites about blanket ‘rules’

In light of the issues raised in **Parts 4.2.7** and **7.3** above, DEC and NESA might wish to have their legal advisers review all the blanket, categorical, unqualified assertions, ‘rules’, prohibitions, proclamations, claims and pronouncements on their websites, in particular for the purpose of forming a view as to whether any of them arguably fall foul of s. 44 of the *DDA* or of ss. 6.2 or 6.3 of the *Standards.*

## 8.6 Adopt a ‘Universal Design for Learning’ approach to obviate the need for disability adjustments altogether in the exam context

Article 2 of the UN Convention on the Rights of Persons with Disabilities http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf defines ‘**universal design’** as the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.

**Universal design for learning** (‘**UDL**’) is an educational framework and set of principles which seek to apply the concept above to the field of education. Educators plan their teaching, curriculum and assessment in a way which meets the diverse and variable needs of all students, and which provides all individuals with equal opportunities to learn, regardless of ability, disability, age, gender, or cultural and linguistic background. UDL provides a blueprint for designing goals, methods, materials, and assessments which can accommodate individual learning differences to reach all students including those with diverse needs.

UDL is different from other approaches to education in that educators begin the design process **expecting** the curriculum and assessment measures to be used by a diverse set of students with varying skills and abilities - not a single, one-size-fits-all solution but rather flexible approaches that can be customized and adjusted for individual needs.

In the context of education, however, UDL seems to have been largely eschewed in favour of a legislative and policy framework which begins with the premise that every student will do X, but then sometimes some students (whose disability means that they cannot do X) will be allowed in some circumstances to do Y – but of course only as long as:

- Y is ‘reasonable’, and

- Y doesn’t cost too much (‘unjustifiable hardship’), and
- Y could not be seen as conferring some form of unfair ‘advantage’ over all the students without disability who must do X and cannot elect to do Y, and
- Y could not be seen as interfering with the ‘academic integrity’ of a task or test or exam.

Under this scenario of offering so-called ‘reasonable’ adjustments to students with disability in some limited circumstances, huge amounts of time, attention and resources must be devoted to debating and deciding on the exact meaning of variable concepts such as ‘reasonable’, ’unjustifiable hardship’, ‘advantage’ and ‘academic integrity’.

The tension thereby created, and the bitter arguments and legal actions which inevitably ensue, call into question the wisdom of opting for a ‘reasonable adjustments’ approach over a UDL one.

The concept of making ‘adjustments’ is at odds with the UDL approach in many ways. Under the former, teachers must continually retrofit their curricula and assessment tasks to address the needs of those comparatively few students with disability who cannot, for whatever reason, deal with the curriculum or assessments as originally designed. Such students with disability then inevitably come to be viewed as some form of burden or nuisance – requiring a busy teacher to devote even more work to each and every task in a sometimes half-baked attempt to offer access and participation for all (or to be seen to be attempting to do that).

Much of this extra cumbersome and burdensome work could be avoided if teachers could simply apply the principles of UDL from the start.

In the context of disability adjustments for tests and exams, would it not make more sense, and would it not save untold amounts of time and money, to devise a scheme which would from the very beginning make all exams accessible to **all** students (with and without disability) without anyone ever having to apply for any kind of special adjustments to an exam designed only for those without disability.

Such a solution would save the time and money of DEC and NESA personnel, school personnel and private diagnosing professionals [and hence parents] and, perhaps more importantly, it would see the end of all the arguing, unpleasantness, uncertainty and interminable but fruitless comparison of who had qualified for what at which school – since everyone would simply qualify for everything.

Below are two examples of how UDL might just constitute NESA’s special sauce and might be applied to the designing of its HSC exams so that no candidate would need adjustments:

## 8.6.1 Allow unlimited time and control output by word limit instead

One of the most contentious disability adjustments (and one of the two which have the reputation amongst applicants of being ‘hardest to get’ for State exams) is **extra time** to read and/or to write.

As noted in **Part 4.2.7** above, it seems from the NESA website that ‘5 minutes per half hour’ is the amount of time most frequently awarded (in the very rare cases when extra time is in fact approved at all…).

And as noted in **Part 4.2.3** above, extra time to address the effects of a disability which results in a slow processing speed or a slow reading speed or a slow handwriting speed or a poor working memory or an uncorrectable vision impairment does not bring the child with the disability up to the level of a child without the disability – it just helps.

Extra time will **only partially compensate** for the effects of the child’s disability, and will in no way confer an ‘advantage’ on them. It will not completely enable the child to perform in the exam as well as if they did not have the disability in the first place, or as well as a student without disability, and accordingly it will not unilaterally ‘level the playing field’, but it may serve to make that field just slightly more level.

Even **with** the extra time, the child with disability will still need **to work very hard** to properly prepare for their exams, in an attempt to overcome some of the unaddressable effects of their disability.

And, contrary to the facile assumption and unexamined belief that ‘of course everyone would perform better with more time’, the research has shown that:

- while there is a significant difference between scores obtained by students with disability and by students without disability when both write exams under timed conditions, there is by contrast no significant difference in test performance between students with disability and students without disability when students with disability are granted extra time;

- students without disability do not perform significantly better when allowed extra time than when not allowed extra time;

- when everyone is given extra time, the scores of students without disability do not increase (or do not increase significantly), whereas the scores of those who actually **need** the extra time (ie, students with disability) do indeed increase; and

- therefore, extra time is an appropriate adjustment for students with disability.

(Alster, 1997; Cahalan & Trapani, 2005; Cohen, Gregg & Deng, 2005; Fuchs, Fuchs, Eaton, Hamlett & Karns, 2000; Johnson, 2008; Lesaux, Pearson & Siegel, 2006; Lindstrom, 2007; Runyan, 1991; Shaywitz, 2008; Sireci, Li & Scarpati, 2003). [Copies of, or full citations to, these articles will be supplied upon request.]

One response to the problem of timed exams and their inciting of NESA applications for extra time is of course to opt for **untimed** exams. This is a solution which I have seen in operation with great success in schools in the United States.

This approach entails **controlling output by word limit rather than by time.**

For example:

> "Analyse Juliet's relationship with her father and consider how it might have been different had Juliet been alive today.
>
> Word limit: 1000 words
>
> This task can reasonably be expected to take [one hour/two hours/whatever], but you are free to leave at any time or to stay as long as you wish to complete it.
>
> However**, no matter how much you write, only the first 1000 words will be read and graded**."

Consider a student who has not read *Romeo and Juliet,* and has not been listening when the play has been discussed in class, and has not given any thought to the characters' personalities and motivation or to the historical context and the prevailing cultural views of the time. Clearly such a student in a closed-book exam will not do a good job on this question **no matter how long they choose to sit and look at it.**

**No amount of extra time will help such a student** – or anyone else (no matter how clever…) if they have not learned their work and properly prepared for the exam.

Five minutes per half hour (or even 30 minutes per half hour…) will not magically put the answers into the head of a student who has not already done that for themselves long before the exam time starts to run.

If, by contrast, every candidate were to have unlimited time to compose 1000 words, then no one would complain that anyone else has had an unfair ‘advantage’ – there would be no disability adjustment to apply for, and no fighting and no fuss. No one would wail, “Well **I too** would have done a better job if only I hadn’t run out of time – if only I’d had as much time as my friend with disability – not fair!”

Of course the option of allowing unlimited time may be greeted by schools with the very reasonable reaction: “But what happens if a few of them are still sitting there at 10:00 at night?”

Experience has shown, however, that while a very few students at first will opt to stay longer than they need to do the best they can in 1000 words, the vast majority will write what they know, edit and polish it, and leave in more or less the previously foreseen time for completion.

Students soon realise that in a closed-book exam there is no chance of improving their grade if they have already written all they can think of. Everyone will soon understand that the best option for an ill-prepared student is to cut their losses in **this** exam and go home and get on with studying for the next one. And virtually all candidates will agree that sitting for hours staring at a question which they can’t answer very soon becomes ‘boring’.

If however it does turn out that a few students are unreasonably abusing the ‘unlimited time’ offering, then schools could experiment with giving limited, but exceptionally generous, time: “This is a two-hour exam but if you wish, you may have four hours to complete it. However, no matter how long you stay and how much you write, only the first 1000 words will be read and marked.”

Under this approach of unlimited or exceptionally generous time, students without disability would write all they know (condensed into 1000 words) and students with disability would have as much time as they need to do the same, just like their peers.

Assuming that the purpose of testing is to assess what students actually **know** (rather than how fast they can scribble it out), who would be advantaged or disadvantaged by such an approach? Every child would have an equal opportunity to experience success and develop confidence in taking exams, thereby decreasing the magnitude of mental health issues associated with exam taking by so many students in the current climate of “I have to write it all down as fast as I can and what if time is called before I have remembered everything?”

From a different but related perspective, why do exams have to be timed in the first place? Whose interests does that serve?

Presumably the HSC final exams are designed to test a student's knowledge of a subject, not a student's reading or writing or processing **speed**? [In the latter case (ie, a test of sheer speed) of course extra time would interfere with the integrity of the test, contrary to s. 3.4(3) of the *Standards.*]

How many professions and jobs and careers realistically expect employees to be able to do their tasks FAST?

With the exception of people such as those who land airplanes or administer anaesthetic, how many adults need to perform their work under such time pressure? How many need to be able to think that fast?

Surely the answer to cancer will one day be discovered by some slow-thinking, painstaking, meticulous and reflective individual content to sit quietly day after day and year after year looking down a microscope and wondering, "Could it be this? Could it be that?"

One wonders if researchers or lawyers are usually told, "You have two hours to come up with the solution and write it out in handwriting. Go!"

### 8.6.2 Allow choice as to response method (handwriting or computer or scribe) and question paper presentation

Without doubt the second of the two 'hardest to get' disability adjustments is permission to type long prose answers on a computer:

- even when such a recommendation has been strongly made in a series of reports from several different kinds of professionals, and
- even if the child has never been able to learn to cursive handwrite and has accordingly been typing absolutely all their schoolwork on a keyboard since Year 2.

In 2015 only 103 HSC candidates out of a total of over 70,000 were allowed to type their long prose answers on a computer: http://www.boardofstudies.nsw.edu.au/disability-provisions/2012-2015-stats-freq-dist.html .

NESA's position is clear:

> *The HSC is a timed, hand-written examination so the use of a computer is granted only under very stringent conditions where there is no appropriate alternative provision.*
> http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf page 4

In a 2012 letter from the then Minister for Education to an appellant, the following argument is proffered:

> *Access to a computer in an examination substantially changes the nature of the student's response and introduces further considerations, such as the potential for fast typing speed and a different appearance of the response put before the markers. A computer is approved only for those students who have demonstrated the failure of another provision, such as a writer, to address their disability.*

A child must therefore show how they will 'fail' when using an alternative adjustment, such as a scribe, in order to be eligible for the very adjustment (computer) which the child's professionals have expressly recommended (and see also **Part 7.5.2** above)

NESA's and the Minister's stance above is somewhat hard to reconcile with a plethora of other NESA documents and pronouncements such as those listed in **Part 7.5.1** above, and such as Principle 5 of NESA's "10 principles for special examination modifications" (http://www.boardofstudies.nsw.edu.au/special_ed/exam-modifications.html) which refers expressly to assistive technology.

Similarly, the use of computers in testing is highlighted by NESA's own *Stronger HSC Standards* document: http://www.boardofstudies.nsw.edu.au/policy-research/pdf_doc/stronger-hsc-standards-evidence.pdf - pages 16-17, and in particular:

> *Paper-based essays and tests are not the only way to measure student learning against the desired outcomes stated in the syllabus; nor are they always the most effective assessment method for each syllabus outcome.*

One wonders then, if paper-based tests are truly 'not the only way to measure student learning', why were only 103 of over 70,000 HSC candidates in 2015 allowed to have their learning measured by answers typed on a keyboard?

Further, in the context of substituting one kind of adjustment for another, NESA is arguably under a duty to "assess whether there is any other reasonable adjustment that would be **no less beneficial** for the student" (*Standards* s. 3.6(a) [**emphasis** mine]).

For some students with disability, the alternative adjustment (dictating to a scribe) is undoubtedly 'less beneficial' than typing on a keyboard.

Scribing is a learned skill which some have been practising since Year 7. It required a very different approach to responding to a question, documenting and proofreading and editing answers all at the same time. Scribing thus places some children at a distinct disadvantage vis-a-vis all other students who are able to use their normal well-established exam techniques and approaches.

Surely, **expecting a child with disability who has typed on a keyboard since Year 2 to suddenly switch horses in midstream and start to dictate to a scribe at the end of Year 12 is utterly unrealistic.** How could forcing a child to use a scribe instead of a keyboard possibly meet the legislative test of ‘no less beneficial’ for such a child?

Further, the sophisticated skill of dictating to a scribe is one which virtually no one in the workplace would ever use again since today virtually everyone types. Long gone are the days of lawyers pacing up and down their enclosed offices dictating to shorthand-proficient secretaries.

Why take a child who has never in 13 years dictated to a scribe, and make them spend untold hours in the thirteenth year learning and practising how to dictate to a scribe, and then send them off to university or to the workplace where realistically most will never have occasion to use that archaic skill again?

We are currently being inundated with articles advising that the role of education these days is to equip children with ‘21st Century Skills’, and yet at the same time for their HSC final exams we require some students with disability to acquire and practise and use a decidedly antiquated one.

Further, some children with comorbid disability will be especially disadvantaged by being required to dictate to a scribe instead of typing on a computer, for example:

- if the child also has an **anxiety** disorder, the presence of a scribe might heighten the child’s anxiety, eg, ‘What will the scribe think of me; Will the scribe be judgemental if what I dictate sounds ‘stupid’; Will the scribe like me’ and all sorts of other irrelevancies which might preoccupy a child with an anxiety disorder but which would not bother others; or

- if the child also has an **ASD** diagnosis, the child may be unwilling to sit beside or interact with a stranger, but if the child chooses to instead sit opposite the scribe, the child will have to proofread his responses upside down, or to stand behind the scribe and read over the scribe’s shoulder. No other student without disability is required to do this; or

- if the child also has **ADHD** which is not able to be managed by a medicine, the child may have difficulty staying focussed on the content of what they are dictating, for example if they have to wait for a handwriting scribe to catch up. Being asked to repeat what they've said instead of continuing to think and dictate new material may cause some with ADHD to lose their train of thought; or

- if the child is unable to read **cursive** writing and can comprehend only typing, then unless the scribe is typing, the child will be unable to proofread their work before handing it in, unless it is read back to them aloud – and again, 'proofreading' and editing orally delivered text is a new and sophisticated skill in itself. Again, no HSC candidate without disability is required to master that skill or to read anyone else's cursive handwriting.

Further, the appointed scribe is almost always a child from a lower grade who, though unquestionably well-intentioned, inadvertently makes spelling and syntax mistakes in their transcriptions. And of course those mistakes are then counted against the Year 12 dictator, not the younger child scribe who is doing their best with words they may have never encountered before.

Moreover, not all children with disability can necessarily type faster than children without disability can handwrite.

And not all children with disability will want to.

For example, some years ago on the strength of medical and occupational therapists' reports, one Year 12 girl with disability in a NSW selective high school was granted permission to type on a computer without spellcheck for her HSC trials. She actually did **worse** on those exams than she had ever done on any exams before. Why? Because she simply didn't write enough.

Instead, she spent all her time proofreading and perfecting the little bit which she HAD produced in typing – just because she COULD - ie, because it was tempting to do that on a computer - whereas when the girl was required to handwrite, her scribblings were so messy and so hard to decipher that even SHE was not game to spend time proofreading and polishing – and instead she just kept writing more and more content which accumulated more and more marks.

Consequently, for the HSC final exams, this girl chose to handwrite all her answers and she ended up getting top grades.

Clearly for this child a computer would not have constituted an 'advantage' but rather a distinct 'disadvantage'.

Similarly, some children with disability who know that spelling and punctuation and capitalisation are areas of impairment will opt for a scribe rather than a computer, simply because they know that, no matter how many language errors the younger-grade scribe may make, the resulting text is still likely to be more comprehensible than what the Year 12 child with disability would have been able to type out on a keyboard without spellcheck.

In light of the above, surely the solution is clear: simply allow **everyone** to choose to handwrite or type or dictate as they wish?

Again, there would be no disability adjustments to apply for, and no fighting and no fuss. And no one would complain that of course they would have done better if only they'd been allowed to type or dictate or handwrite or print or whatever happens to be their preference, since everyone could simply choose whichever they'd prefer.

Markers would no longer be able to draw unflattering inferences from the format of the response paper, and students would no longer have to be worried about the inevitable warning, “But as soon as the marker sees that your answers are typed, they'll know who have a disability and they will lower their expectations accordingly.”

Along similar lines, what would be the harm in allowing each child to choose the font size for their question papers or the colour of the paper on which the questions are printed, without having to provide evidence of a disability to qualify for these measures? Would enlarged font or coloured paper really advantage anyone who didn't need or want those modifications?

If everyone had such choices, there would be no arguing about exactly how vision-impaired a given child really is, what size font he can and cannot see, and which colour paper is easiest for him to read to minimise glare. How much money would be saved on optometrists' and Irlen screeners' reports, not to mention the time devoted by NESA clerks to deciphering and evaluating them.

And no one would complain that if only they'd been allowed to have blue paper or size 24 font, they would have got a better grade – as everyone could have had whatever they wished.

## 8.7 Implement the recommendations of former reviews and inquiries

We seem to have had many years of Inquiry after Inquiry, Review after Review, and Committee after Committee at both federal and state levels, each charged with looking into this, that and the other aspect of disability in education, and all eventually producing shiny comprehensive reports with lists and lists of well-considered recommendations.

Very recent examples include:

- **The 2016 NSW Auditor General** report *Supporting students with disability in NSW public schools* http://www.audit.nsw.gov.au/publications/latest-reports/supporting-students-with-disability with its long list of laudable, but hardly novel, recommendations (beginning on page 4) as to what DEC should do in the context of students with disability. While this report expressly excludes the work of NESA (page 34), reference is made on page 16 to a list of (impliedly recommended…) adjustments for students with disability, and amongst these is 'additional time and/or rest breaks for assessment tasks' – the very adjustments which are so appallingly difficult to obtain for the HSC final exams; and

- The **2015 Review of the *Standards*** which recommended that the States "improve continuity and consistency of adjustments between classroom and assessment contexts" -- Recommendation 12 on page ix here: https://docs.education.gov.au/system/files/doc/other/final-report-2015-dse-review.pdf ; and

- The **2015 Senate Committee Inquiry** into *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*, whose final report http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/~/media/Committees/eet_ctte/students_with_disability/report.pdf again presented 10 very sensible, but hardly novel, recommendations to address the very concerning scenarios which members of the Committee had encountered in their public hearings and in the written submissions which the study provoked.

Similarly, there is a continuing plethora of government publications purporting to describe and explain the relevant legislation and educators' responsibilities under it.

Some recent examples:

- The federal education department has published some practice '**exemplars'** to suggest to schools and parents what might qualify as 'reasonable' adjustments under the *Standards* in the proto-type circumstances described therein: https://docs.education.gov.au/documents/exemplars-practice . Ironically some of the examples include recommended adjustments which, for HSC final exams, are almost impossible to get.

- The federal education department has also published a 'national resource' called '**Planning for Personalised Learning and Support**': https://docs.education.gov.au/system/files/doc/other/planningforpersonalisedlearningandsupportnationalresource.pdf containing a variety of lists of lofty-sounding advice – and yet again, NESA so often fails to comply with that very advice when it comes to the HSC final exams.

In spite of all of the foregoing inquiries and pronouncements, things in general still don't seem to be improving greatly for children with disability in education [universities being a notable exception to this generalisation, but sadly, as mentioned in **Part 4.2.4** above, so many students with disability will never get to go to uni, where their needs will be respectfully and adequately addressed, because they can't or won't stay on until, or ever get out of, Year 12 in the first place].

With respect to the Inquiry's Terms of Reference paragraphs (b) and (c), I note that, with a very few isolated examples, I have noticed **virtually no improvement** in NSW education providers' response to children with disability:

- since the *More Support for Students with Disabilities* program http://www.cda.org.au/more-support-for-students-with-disabilities-national-partnerships was implemented and then wound up, or

- since the introduction of the DEC initiative *Every Student Every School* http://www.dec.nsw.gov.au/what-we-offer/education-and-training/disability-support/every-student-every-school, or

- since the *Nationally Consistent Collection of Data on School Students with Disability* http://www.education.gov.au/what-nationally-consistent-collection-data-school-students-disability initiative has been in the process of being trialled and now finally implemented over the past few years, or

- since the publication of the findings of the 2010 NSW Legislative Council Parliamentary *Inquiry into the Provision of Education to Students with a Disability or Special Needs* https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5342/100716%20The%20provision%20of%20education%20to%20students%20with.pdf, many of whose 31 aspirational recommendations could be simply copy/pasted into the final report of the present Inquiry and 're-recommended' since they remain today largely unaddressed and unimplemented, or

- since the copious laudable recommendations of all the other former inquiries and reviews have been published, briefly showcased in the press, perfunctorily acknowledged by government, and then simply systematically ignored.

Instead of:

- striking more and more committees to conduct more and more costly and time-consuming reviews and inquiries, most of whose recommendations eventually come to naught, and

- publishing more and more aspirational but unenforceable guides on how to implement the legislation which is already in force,

could consideration perhaps rather be given to simply reviewing all the excellent reports of past such initiatives, and deciding once and for all which of their many well-considered recommendations to implement – and then simply getting on with implementing them?

# 9. And finally….

The general principle that children with disability should, as far as possible, be afforded equal access to education is enshrined in statute yet frequently unrealised in practice.

One wonders if there is any other Australian legislation in the face of which adults feel confidently justified in asserting, "Well that may be the law, but we can't be bothered complying with it here – so we won't."

The implications of systemic failure to implement disability adjustments under the *Standards* are serious for **all** children with disability.

For **gifted** children with disability, however, such failure highlights the huge and dangerous difference between:

- on the one hand, **high achieving** gifted children with disability who will grow up to make remarkable contributions to Australian society, and

- on the other hand, **underachieving** gifted children with disability who may go through school feeling angry, misunderstood and frustrated, and who accordingly may later elect to turn their high intelligence to somewhat less worthy pursuits.

Can the problems faced by gifted children in this context hold a candle to the tragic experiences of those children who undoubtedly will be described in shocking detail in other submissions to the Inquiry – for example, children with disability who have been tied to desks or locked in cages?

Of course not.

Nevertheless, gifted children are those who have the greatest potential to become Australia's next generation of leaders and innovators, and ultimately the greatest potential to contribute to the economic and social welfare of the nation.

This portion of today's school population will produce tomorrow's outstanding inventors, scientists, mathematicians, engineers, airline pilots, poets, judges, and creative business executives. Meeting their needs at school now is unquestionably central to building the future economic prosperity of Australia.

In an age where knowledge creation and innovation are of paramount importance, the gifted are the nation's greatest resource, and neglecting their needs will risk leaving our nation behind in an increasingly competitive world.

If we squander this resource and if we offer this group of children a mediocre education today, we doom ourselves to a mediocre society tomorrow.

Thus whenever a gifted child decides to discontinue their education for any reason relating to the child's concomitant disability, Australia has arguably lost one more potential contributor to our next generation of leaders.

**Forcing children with disability (gifted or not) to do their schoolwork and take their tests and exams for 13 years without their professionally recommended disability adjustments is tantamount to requiring a vision-impaired child to undertake such tasks without wearing their glasses.**

Obtaining appropriate disability adjustments should not be a matter of 'luck' – a lottery whose result depends largely on:

- which school a child happens to attend, and
- whether that school happens to have sufficient experienced and knowledgeable staff in a given year to introduce the adjustments for students with disability and to prepare and submit cogent applications to NESA for NAPLAN and for the HSC final exams, and
- whether a child happens to have parents able to navigate and continually do battle with an inflexible and ill-informed system.

Repeated academic failure or academic under-performance over many years sees the child’s resilience meter stuck on zero, with the result that their school underachievement may be expected to solidify into an entrenched pattern, even after leaving school.

I cannot emphasise enough the disruption, stress and trauma experienced by countless NSW families whose children with disability are being denied disability adjustments.

Bitter conflict is occasioned by:

- a child with disability wishing to apply for adjustments, but a parent not agreeing, or
- a parent wishing to apply, but a child not agreeing, or
- one parent wishing to apply, but the other parent refusing because they are unwilling to admit outside the family that their child has ‘anything called a disability’, or
- a school wishing to apply to NESA for adjustments for NAPLAN or for the HSC final exams, but the parents not agreeing, or
- the child and parents wishing to apply, but a school not agreeing, or
- the child, parents and school all in agreement about the application, but NESA’s staff vigorously discouraging its submission, or
- NESA demanding to see updated medical and other professionals’ reports, and:
    - the parent refusing to comply because all the expensive reports already obtained have noted that the disability is permanent and not likely to ’clear up’, or
    - the parent agreeing, but the child refusing to attend any more appointments or undergo any more assessments because “I’ve been doing that my whole life”.

Sometimes, the resultant distended unpleasantness and anguish go on for months and months. The arguments become ever more acrimonious and the positions ever more entrenched.  Some families have disintegrated under the pressure of what one distraught parent termed ‘a slow-motion train wreck’.

With respect to HSC final exams, I have never seen anything like this level of disquiet and harm to families in the straightforward systems under the

auspices of either Queensland or the IB. Why should this be necessary in NSW?
We know that the outcomes for students with disability are generally worse than for students without. Fewer students with disability complete Year 12 or undertake university study, fewer gain full-time suitable employment, and as adults more end up having a lower income than employees without disability.

**By not providing the appropriate assistance when students with disability are little, we are determining in advance that for the next 60 years they have a greater chance of draining the welfare system than of contributing to the taxation one.**

Allowing children with disability to obtain approval for professionally recommended disability adjustments while at school is but one way to address this situation.

Additionally, and politically incorrect as this suggestion may be, perhaps the whole currently fashionable 'inclusion' premise needs to be totally re-examined and perhaps recalibrated

More and more children with disability are now being channelled into mainstream mixed-ability classes and left there without individual support. Parents of children with disability report that they are being strongly encouraged by disability support organisations to categorically insist on sending their child to a mainstream school, without even first considering or becoming knowledgeable about the possible benefits of a so-called 'special school' or a school devoted to addressing the very disability being experienced by that child.

Teachers increasingly complain that it is impossible to competently meet the needs of everyone they are expected to teach, either because teachers have never been properly trained in how to do that, or because the training which they have indeed received is simply too difficult to implement in a classroom with such a wide range of diversity.
In my experience, countless teachers at the end of a professional development session on differentiation have been heard to mutter, "Well if they really want me to do all that, then they'll have to pay me more. I won't do it, and they can't make me."

Media suggests that nearly half of graduate teachers quit teaching within five years, for example:
http://www.abc.net.au/radionational/programs/lifematters/keeping-teachers-in-our-schools/8243714 . Perhaps one reason is that, as mentioned by a participant in the linked radio interview (circa 21:00), 'differentiation' means that 'every problem in society should be solved by a teacher in a school', but in reality 'that's never going to happen'.

In recent years we seem to have hit a new nadir in meeting the needs of children with disability. The arguments in favour of the currently fashionable ‘inclusion’ model have too many rough edges to merit remaining unexamined and unchallenged.

And yes of course this is a difficult needle to thread - but it is not impossible.

Unless a serious attempt is made to address some or all of the issues outlined in this submission, the present Inquiry’s final report will be simply added to the unfortunate reports of all the former inquiries and reviews listed in **Part 8.7** above, and the Inquiry’s undoubtedly laudable recommendations will similarly be papered over and eventually come to naught.

In their 2010 testimony before the NSW Legislative Council Parliamentary *Inquiry into the Provision of Education to Students with a Disability or Special Needs*, a solicitor representing the NSW Disability Discrimination Legal Centre made reference to school meetings which end with parents, teachers and principals throwing chairs at each other: https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/8969/100510%20Corrected%20transcript.pdf (page 85).

To date I have not attended a school meeting with parents or teachers who have thrown chairs, and no chairs have been thrown at me.

Sadly, however, I do understand profoundly how a parent-school relationship might break down to the point that this option may actually seem attractive.

There has to be a better way.

And I congratulate the framers of the present Inquiry on your efforts to find one.

I am grateful for the opportunity to contribute to this Inquiry, and GLD Australia is of course very happy to provide further information with respect to the issues raised in this submission, or to otherwise collaborate with you to pursue the Inquiry’s goals.

I am also happy to appear and give oral testimony at any of the public hearings listed on the Inquiry’s website which are to be held in Sydney.