

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

Organisation: Children and Young People with Disability Australia
Date received: 27 March 2017

General Purpose Standing Committee No. 3

Inquiry into Students with a Disability or Special Needs in New South Wales Schools

**Children and Young People with Disability Australia
Submission – February 2017**

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EDUCATIONAL EXPERIENCES OF NEW SOUTH WALES STUDENTS WITH DISABILITY – POOR EXPERIENCES AND OUTCOMES ARE COMMON

These examples reported to CYDA reflect the broad range of poor experiences and outcomes that commonly characterise the education experiences of students with disability in New South Wales (NSW):

They would get us to watch DVD's for sport and other lessons, which were for little kids not a 16 year old. At lunch and recess every day I was in the library on computers. I want to be treated like other students – Student, 16 years.

The system failed my son. I feel I had no choice but to pull him out of mainstream school to home school with no support.

I would have much preferred my child to attend the local public school. The school place he was offered had no sensory support and required him to wear a red vest so that other children could keep their eye on him.

Staff are ill equipped to provide the right support and are knocking back training and new strategies to help my son. As a result he accesses less than 10% of the curriculum, the school has become a babysitting service. My son is missing out and falling further behind.

My child has no voice, he is shut down when trying to talk or express his needs. This has been witnessed by another parent and myself...He was also dragged along by his arm to the classroom instead of being directed there.

My six year old...has been suspended numerous times and has an absence record of 15 full days and 40 partial days due to the school not being given (appropriate) funding and staffing resources. This is not inclusive education.

The school claims they cannot get funding for (my son) and they can't afford resources, but they don't use interventions to create fair education. This happened at a private school too.

In Year 1...my son had a less supportive teacher. He struggled to complete his writing tasks as quickly as the teacher wanted him to...I would come to pick him up at the end of school and ask how his day had been and find out that he had been sitting there all day and no one had helped him and he felt his teacher was "angry with him again."

School staff do not understand my child's needs and label him as naughty.

My child was excluded from the drama group, the choir, sport, and a talent quest just in case he embarrassed the school.

(My son) didn't want to go back to school because he didn't want to be locked in the storeroom anymore. The school claims that it never happened.

After being dragged by staff (my son) was put in a fenced-in outdoor area by himself in the middle of winter without a jumper. The staff even closed the blinds so he couldn't see into the room. He was terrified and banging on the door begging to be let back in as witnessed by another parent. The school didn't notify me about the physical restraint nor the locking him outside alone. I was told by another parent.

(There is a) physical seven foot fence around the compound that houses autism classes, the kids are segregated from play and lunch areas, with no assimilation into peer groups.

My son has been physically restrained by teachers and on another occasion by senior students. (He was also forced to) sit on a chair in the office block and was not allowed to leave under any circumstances.

The bullying has been disgusting. Physical and mental! The Principal stated that the 'zero tolerance policy' for bullying was only for "normal kids" and that weird kids had to expect to be bullied! My son has experienced bullying from the minute he began school and he has missed a lot of school because of it.

Students with disability contend with profound barriers and disadvantage within the NSW education system. A typical education experience for students with disability involves discrimination, limited or no funding for support, inadequate expertise of staff, a systemic culture of low expectations, exclusion and bullying. There are also increasing incidents of restraint and seclusion reported to Children and Young People with Disability Australia (CYDA).

In recent years there have been a range of reforms, programs or initiatives impacting students with disability that have been implemented at the state and Commonwealth level. Despite this, CYDA has observed minimal improvements in the education experiences of students with disability in NSW.

CYDA also notes that there have been numerous previous state and Commonwealth inquiries that have clearly articulated the current experiences and barriers faced by students with disability, yet meaningful change has not yet occurred. While this latest inquiry into *Students with a Disability or Special Needs in NSW Schools* is welcomed, it is critical that meaningful and embedded reform to the education system occurs to ensure it can adequately meet the needs of students with disability. Further, it is imperative that this reform is informed by the direct experiences of students with disability, relevant human rights frameworks and legislation and available evidence regarding best practice.

This submission will draw on CYDA's extensive body of work regarding education, with a specific focus on the NSW experience.

CHILDREN AND YOUNG PEOPLE WITH DISABILITY AUSTRALIA

CYDA is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Australian Government Department of Social Services and is a not for profit organisation. CYDA has a national membership of 5300.

CYDA provides a link between the direct experiences of children and young people with disability to federal government and other key stakeholders. This link is essential for the creation of a true appreciation of the experiences and challenges faced by children and young people with disability.

CYDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- **Listen and respond** to the voices and experiences of children and young people with disability;
- **Advocate** for children and young people with disability for equal opportunities, participation and inclusion in the Australian community;
- **Educate** national public policy makers and the broader community about the experiences of children and young people with disability;
- **Inform** children and young people with disability, their families and care givers about their citizenship rights and entitlements; and
- **Celebrate** the successes and achievements of children and young people with disability.

CYDA has undertaken extensive advocacy to progress greater understanding and awareness of the direct experiences of students with disability and the critical need for reform in education. This has included direct representation to governments and ministers, participation in related advisory bodies, contribution to a range of national and state based inquiries and consultations, provision of numerous policy submissions and reports, publication of issues papers and hosting a range of events.¹ In addition, CYDA conducts an annual national survey on the education experiences of students with disability. A summary of the 2016 national results is provided for the Committee's consideration (see Appendix A).

HUMAN RIGHTS AND LEGAL CONTEXT

The United Nations *Convention on the Rights of Persons with Disability 2006* (CRPD) and the *Convention on the Rights of the Child 1989* (CRC) clearly establish the right of children and young people with disability to receive a quality, free and inclusive education.² Australia has signed and ratified both of these international human rights treaties, thereby demonstrating its commitment to protect and respect the rights, standards and obligations contained in both international treaties.

The CRPD refers in article seven to the obligation of "State Parties to take all necessary measures to ensure the full enjoyment of children with disabilities of all human rights and fundamental freedoms on an equal basis with other children."³ Article 24 specifically relates to education:

*State Parties recognize the rights of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an **inclusive education system** at all levels and lifelong learning directed to:*

1. *The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental rights and human diversity;*
2. *The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and*
3. *Enabling persons with disabilities to participate effectively in a free society.*⁴

¹ Further information about CYDA's work in the area of education is available at <http://www.cda.org.au/>.

² United Nations General Assembly 1989, *Convention on the Rights of the Child*, articles 28, 29, United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, articles 7, 24.

³ United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, article 7.

⁴ Ibid, article 24.

In 2016 the United Nations Committee on the Rights of Persons with Disabilities adopted the *General Comment on the Right to Inclusive Education*. This General Comment provides a detailed explanation and definition of article 24 of the CRPD. As a signatory to the CRPD, the Comment is a critical reference for Australia which articulates actions that should be taken to afford this right to students with disability.

The General Comment states that inclusive education “focuses on the full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of being marginalised. Inclusive education involves access to and progress in high-quality formal and informal education without discrimination.”⁵ Inclusion is defined as a:

*(Process) of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences.*⁶

The General Comment also articulates the “specific and continuing obligation to move as move as expeditiously and effectively as possible” towards realisation of article 24. In particular, CYDA would like to highlight the following actions included in the Comment that will contribute to the implementation of the right to inclusive education:

- *States parties must ensure a comprehensive and inter-sectoral commitment to inclusive education across government;*⁷
- *States parties, at every level, must implement or introduce legislation, based on the human rights model of disability that fully complies with article 24;*⁸
- *A comprehensive and co-ordinated legislative and policy framework for inclusive education must be introduced, together with a clear and adequate time frame for implementation and sanctions for violations;*⁹
- *Legislation must be supported by an Education Sector Plan, developed in consultation with (representative organisations for children with disability), including children, and detailing the process for the implementation of an inclusive education system;*¹⁰
- *States parties must collect appropriate disaggregated data to formulate policies, plans and programmes to fulfil their obligations under Article 24;*¹¹ and
- *State parties must commit sufficient financial and human resources throughout the development of Education Sector and cross-sector Plans to support the implementation of inclusive education, consistent with progressive realization.*¹²

Inclusive education, despite being a right, is far from being a reality for most students with disability in Australia. It is critical that all levels of government in Australia commit to a reform agenda that

⁵ United Nations Committee on the Rights of Persons with Disabilities 2016, *General Comment No. 4 on the Right to Inclusive Education*, Geneva, s. 9.

⁶ Ibid, s. 11.

⁷ Ibid, s. 59

⁸ Ibid, s. 60

⁹ Ibid, s. 60

¹⁰ Ibid, s. 62.

¹¹ Ibid, s. 66.

¹² Ibid, s. 67.

includes clearly defined mechanisms to ensure progressive realisation of the right to inclusive education for students with disability.

Australia has also implemented domestic legislation and policy aimed at upholding the human rights of children and young people with disability. The *Disability Discrimination Act 1992* (DDA) is the primary legislative mechanism for eliminating discrimination on the basis of disability. It covers a range of areas, including education, employment and access to premises.¹³ Further state and territory legislation exists with similar objectives.

The DDA is the overarching legislation for the *Disability Standards for Education 2005*. The Standards aim to ensure students with disability are able to access and participate in education on an equal basis to students without disability.¹⁴ The DDA makes it unlawful to contravene the Standards, and compliance with the Standards is taken to be compliance with the DDA.

POLICY CONTEXT

The *National Disability Strategy 2010-2020* (the Strategy) is a national policy framework that seeks to ensure that the rights contained within the CRPD are reflected in all policies and programs affecting people with disability.¹⁵ It sets a 10 year reform plan for 2010-2020 for all Australian governments to address the barriers faced by Australians with disability. The Strategy aims to ensure that mainstream services and programs including healthcare, housing, transport and education are accessible and address the needs of people with disability.

‘Learning and skills’ is one outcome area of the Strategy that focuses on improving educational programs and outcomes for people with disability. The four policy directions identified in this section of the Strategy are:

- *Strengthen the capability of all education providers to deliver inclusive high quality educational programs for people with all abilities from early childhood through adulthood;*
- *Focus on reducing the disparity in educational outcomes for people with a disability and others;*
- *Ensure that government reforms and initiatives for early childhood, education, training and skill development are responsive to the needs of people with disability; and*
- *Improve pathways for students with disability from school to further education, employment and lifelong learning.*¹⁶

It is noted that the NSW *Disability Inclusion Plan* and the Department of Family and Community Services *Disability Inclusion Action Plan 2015-19* contain minimal reference and specific actions relating to education.¹⁷ Given the importance of a quality education in supporting social and economic participation and inclusion in the community, this is a significant omission. It is critical that this is addressed in all future plans, implementation documents and evaluation. Further, the *General Comment on the Right to Inclusive Education* is key resource that should be used to guide these frameworks.

¹³ *Disability Discrimination Act 1992 (Cth)*.

¹⁴ *Ibid*.

¹⁵ Council of Australian Governments 2011, *National Disability Strategy 2010-2020*, Commonwealth of Australia, Canberra.

¹⁶ *Ibid*, pp. 54-56.

¹⁷ New South Wales Government 2015, *NSW Disability Inclusion Plan*, Sydney, New South Wales Department of Families and Community Services 2015, *Disability Inclusion Action Plan 2015-19*, Sydney.

Recommendation 1: Education be a key focus area in future New South Wales Disability Inclusion Plans and implementation strategies and associated actions align with the United Nations *General Comment on the Right to Inclusive Education*.

Funding Reform

A significant focus of education reform in recent years has been on school funding, including the development of a funding loading for students with disability. The *Australian Education Act 2013* legislated a new model for the provision of Commonwealth funding to schools across Australia and provided principles and objectives to frame negotiations between the states, territories and Commonwealth regarding school funding arrangements.¹⁸

Under the Act, schools are provided with a base amount of funding for each student enrolled (the Schooling Resource Standard or SRS).¹⁹ Students who have been identified as requiring additional support also receive an additional funding loading, including students with disability.²⁰

The Australian Education Act contains only temporary provisions for the funding of schools for students with disability.²¹ This was calculated at 223% of the respective SRS for students attending special schools and 186% for students with disability who attend mainstream schools.²² There was a clear expectation that the loading for students with disability would be finalised during 2014 and implemented in 2015, however this did not occur.²³ It remains unclear when the disability loading will be finalised.

A key factor impacting the development of the loading has been the lack of robust data about students with disability. To address this, the Council of Australian Governments Education Council agreed in May 2013 to undertake the *Nationally Consistent Collection of Data on School Students with Disability* (NCCD) to inform the development of the disability loading. The NCCD commenced in October 2013 and was collected by all Australian schools for the first time in 2015. The data is now collected annually.

In October 2014, the Education Council announced that the data collected through the NCCD to date “is not yet of sufficient quality to provide the information required to inform funding arrangements for students with a disability.”²⁴

The 2016 Federal Budget included \$118 million in funding for schools to support students with disability in 2016 and 2017. The funding is being distributed to schools using information obtained through the NCCD. It is understood that this funding provides a top up for schools based on what they should be receiving under the SRS and the interim disability loading. It does not represent the final disability loading.

¹⁸ *Australian Education Act 2013 (Cth)*.

¹⁹ *Ibid*, s. 31.

²⁰ *Ibid*, s. 31.

²¹ *Explanatory Statement, Select Legislative Instrument 2013 No. 195*, Commonwealth of Australia, Canberra, s. 17.

²² *Australian Education Regulation 2013*, s. 17.

²³ Council of Australian Governments 2013, *National Education Reform Agreement*, Commonwealth of Australia, Canberra, p. 23, 27.

²⁴ Education Council 2014, *Communique 21 October 2014*, Council of Australian Governments, viewed 24 February 2017, <https://goo.gl/o126NI>.

In December 2016, the report containing the 2015 NCCD results was released. The report identified 18% (674 323 students) of all Australian school students as receiving an educational adjustment due to disability.²⁵ However, it also noted that “improving the quality of data collected through the collection is an iterative process” and results must be considered with this in mind.²⁶ The interim disability loading has been again extended to 2017. The timing and development of the full, permanent loading for students with disability continues to be unclear.

EDUCATIONAL OUTCOMES OF STUDENTS WITH DISABILITY

Available national and state statistics illustrate the significant disadvantage experienced in educational attainment and outcomes of students with disability:

| STATISTIC | NATIONAL RESULT | NSW RESULT |
|---|-----------------|------------|
| Percentage of children and young people aged 0 to 24 with disability ²⁷ | 7.7 | 7.4 |
| Percentage of students with disability in schools as identified by the NSW Department of Education ²⁸ | N/A | 12 |
| Percentage of students with disability enrolled in regular classes in mainstream schools ²⁹ | 65.9 | 80 |
| Percentage of people with disability aged 15 to 64 whose highest level of education was Year 10 or below ³⁰ | 45.8 | 50.4 |
| Percentage of people without disability aged 15 to 64 whose highest level of education was Year 10 or below ³¹ | 25.7 | 28.8 |
| Percentage of people with disability who have completed Year 12 ³² | 41 | 41.9 |
| Percentage of people without disability who have completed Year 12 ³³ | 62.8 | 63.5 |
| Percentage of people with disability who have completed a Bachelor Degree or higher ³⁴ | 17 | 18.6 |

²⁵ Education Council 2016, *Improving Educational Outcomes: Emergent Data on Students with Disability in Australian Schools*, Council of Australian Governments, Canberra, p. 8.

²⁶ Ibid, pp. 7-8.

²⁷ Australian Bureau of Statistics 2016, 'Table 1.1 Persons with Disability, by Age and Sex—2003, 2009, 2012 and 2015, Estimate,' *Disability, Ageing and Carers 2015: First Results*, Commonwealth of Australia, Canberra, Australian Bureau of Statistics 2017, 'Table 3.1 All Persons, Disability Status, by Age and Sex—2015, Estimate,' *Disability, Ageing and Carers, Australia: New South Wales, 2015*, Commonwealth of Australia, Canberra.

²⁸ Audit Office of New South Wales 2016, *Performance Audit: Supporting Students with Disability in NSW Public Schools*, Sydney, p. 6.

²⁹ Australian Bureau of Statistics 2012, 'Children with Disability at School,' *Profiles of Disability 2009*, Commonwealth of Australia, Canberra, Audit Office of New South Wales 2016, *Performance Audit: Supporting Students with Disability in NSW Public Schools*, p. 6.

³⁰ Australian Bureau of Statistics 2016, 'Table 7.3 Persons Aged 15 Years and Over, Living in Households, Disability Status, by Selected Social Characteristics—2015, Proportion of Persons,' *Disability, Ageing and Carers, Australia: Summary of Findings, 2015*, Commonwealth of Australia, Canberra, Australian Bureau of Statistics 2016, 'Table 7.3 Persons aged 15 years and over, Living in Households, Disability Status, by Selected Social Characteristics—2015, Proportion of Persons,' *Disability, Ageing and Carers, Australia: New South Wales, 2015*, Commonwealth of Australia, Canberra.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

| | | |
|---|------|---------------|
| Percentage of people without disability who have completed a Bachelor Degree or higher ³⁵ | 30.1 | 31.8 |
| Percentage of young people with disability aged 15 to 24 years with disability who either work, study or do a combination of both on a full time basis ³⁶ | 38 | Not available |
| Percentage of young people without disability aged 15 to 24 years with disability who either work, study or do a combination of both on a full time basis ³⁷ | 56 | Not available |
| Labour force participation rate of people with disability ³⁸ | 53.4 | 51.2 |
| Labour force participation rate of people without disability ³⁹ | 83.2 | 82.8 |
| Unemployment rate of people with disability ⁴⁰ | 10 | 8.2 |
| Unemployment rate of people without disability ⁴¹ | 5.3 | 4.8 |

The value and importance of education is deeply embedded in the Australian community and internationally. In addition, the benefits of education to children and young people in providing opportunities for future social and economic participation is widely recognised and clearly established in research evidence.⁴²

At an individual level, international studies have identified a clear link between education attainment and positive outcomes across a range of life areas including employment, poverty and health. This was demonstrated by an Organisation for Economic Cooperation and Development report, which states that people “with high educational attainment generally have better health, are more socially engaged, and have higher employment rates and higher relative earnings.”⁴³

The impact of inadequate education provision on the life outcomes for children and young people with disability is profound. CYDA is concerned that the present education system is not providing students with disability with the necessary knowledge, skills and resources to support future meaningful social, community and economic participation post school. It is also believed that the affording of a quality and inclusive education is fundamental to the advancement of human rights of people with disability and progressing equality.

³⁵ Australian Bureau of Statistics 2016, *Table 7.3 Persons Aged 15 Years and Over, Living in Households, Disability Status, by Selected Social Characteristics–2015, Proportion of Persons*, Australian Bureau of Statistics 2016, *Table 7.3 Persons aged 15 years and over, Living in Households, Disability Status, by Selected Social Characteristics–2015, Proportion of Persons (NSW)*.

³⁶ Australian Bureau of Statistics 2012, *Australian Social Trends*, Commonwealth of Australia, Canberra, viewed 23 November 2016, <https://goo.gl/u0oAlp>.

³⁷ Ibid.

³⁸ Australian Bureau of Statistics 2016, ‘Table 9.3 Persons aged 15–64 years, Living in Households, Disability Status, by Sex and Labour Force Status–2012 and 2015, Proportion of Persons,’ *Disability, Ageing and Carers, Australia: Summary of Findings, 2015*, Commonwealth of Australia, Canberra, Australian Bureau of Statistics 2016, ‘Table 9.3 Persons aged 15–64 years, Living in Households, Disability Status, by Sex and Labour Force Status–2012 and 2015, Proportion of Persons,’ *Disability, Ageing and Carers, Australia: New South Wales, 2015*, Commonwealth of Australia, Canberra.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid

⁴² Organisation for Economic Cooperation and Development 2016, *Education at a Glance 2016: OECD Indicators*, OECD Publishing, Paris.

⁴³ Ibid, p. 32.

EDUCATION EXPERIENCES OF NSW STUDENTS WITH DISABILITY

CYDA undertakes an annual national survey regarding the education experiences of students with disability. The survey covers a range of issues to provide a snapshot of current experiences nationwide. In 2016 the survey had 1396 respondents, with 28 percent being from NSW. A summary of the NSW results is provided below:

| QUESTION | RESPONSES | RESULT % |
|---|--|----------|
| In what capacity are you completing the survey? | Young person with disability | 8 |
| | Parent | 78 |
| | Other family member | 3 |
| | Other | 11 |
| What type of area do you live in? | Regional | 57 |
| | Remote | 3 |
| | Metropolitan | 40 |
| Are you from a Non-English Speaking Background? | Yes | 8 |
| | No | 92 |
| Are you of Aboriginal or Torres Strait Islander background? | Yes, Aboriginal | 5 |
| | Yes, Torres Strait Islander | 1 |
| | No | 94 |
| How old is the student? | <5 | 2 |
| | 5 to 12 | 54 |
| | 12 to 18 | 34 |
| | 19+ | 4 |
| | Not stated | 6 |
| What is the student's gender? | Female | 33 |
| | Male | 66 |
| | Other | 1 |
| What type of school does the student attend? | Government | 67 |
| | Non-government | 23 |
| | Home schooling | 2 |
| | Distance education or e-Learning | 3 |
| | Other (including pre-school, higher education, or not at school) | 5 |
| What type of setting is the student's school? | Mainstream school | 70 |
| | Special school | 22 |
| | Dual enrolment | 8 |
| If in a mainstream school, what type of class is the student enrolled in? | Regular class | 79 |
| | Special unit | 16 |
| | Other (including gifted, transition, and life skills programs) | 5 |
| Does the student attend school full time? | Yes | 92 |
| | No | 8 |
| Does the student have a diagnosed disability or learning difference? | Yes | 95 |
| | No | 5 |

| QUESTION | RESPONSES | RESULT % |
|---|--|----------|
| Has the student been refused enrolment? | Yes | 7 |
| | No | 93 |
| Is the student receiving specific support at school because of a disability or learning difference? | Yes | 75 |
| | No | 25 |
| Is the student eligible for additional specific funding because of a disability or learning difference? | Yes | 57 |
| | No | 43 |
| Do you think the level of support the student receives at school is adequate? | Yes | 36 |
| | No | 64 |
| Is the student receiving paid support through a National Disability Insurance Scheme (NDIS) Individual Funding Package? | Yes | 10 |
| | No | 90 |
| If yes, are there any supports that the NDIS funds for the student to assist in accessing education? | Yes (including access to specialist allied health, transport, classroom support) | 16 |
| | No | 84 |
| Has the student been excluded from events or activities at school? | Yes | 36 |
| | No | 64 |
| Has the student experienced bullying at school? | Yes | 51 |
| | No | 49 |
| Has the student experienced restraint at school? | Yes | 20 |
| | No | 80 |
| Has the student experienced seclusion at school? | Yes | 19 |
| | No | 81 |
| Does the student have an Individual Education Plan (IEP) in place? | Yes | 65 |
| | No | 35 |
| If yes, were you involved in the development of the IEP? | Yes | 86 |
| | No | 14 |
| Have you heard of the Nationally Consistent Collection of Data (NCCD) for students with disability? | Yes | 23 |
| | No | 77 |
| Has the student been included in the NCCD to date? | Yes | 18 |
| | No | 82 |
| If yes, Were you consulted around what information was provided regarding the student and their support needs? | Yes | 35 |
| | No | 65 |

KEY CONSIDERATIONS FOR STUDENTS WITH DISABILITY

Below is a summary of key barriers and challenges experienced by students with disability within the present NSW education system, including direct experiences of students:

Systemic Culture of Low Expectations

Ableism refers to culturally and historically embedded attitudes and practices arising from the perception that people with disability are inferior to people without disability. These attitudes are frequently encountered in the broader Australian community, as well as the education system, which has a deeply entrenched culture of low expectations in relation to students with disability.

The value of education, which is so highly thought of and applied to children without disability, is often seen as inapplicable or irrelevant for students with disability. Assumptions are often made about limitations regarding what and how students with disability will learn and what their future life opportunities will be. Underlying assumptions frequently position students with disability as 'incapable' or a 'burden.' Further, poor educational attainment is often attributed to the impact of disability without identification or consideration of systemic barriers.

The importance of school culture to developing a quality, inclusive education system is repeatedly referenced in the *General Comment on the Right to Inclusive Education*. In particular, it highlights the need to build "educational environments in which the approach to learning, the culture of the educational institution and the curriculum itself **reflect the value of diversity**."⁴⁴ Further, it states an inclusive education system must by definition afford all students the status of a learner and ensure "**high expectations are established for all learners**, including learners with disabilities."⁴⁵

This issue was also raised in the Audit Office of NSW 2016 report into *Supporting Students with Disability in NSW Public Schools*, which stated that "teachers' attitudes towards disability are critical in determining how well schools support their students."⁴⁶ The audit found that school culture represents a key barrier to the provision of quality education support for NSW students with disability.⁴⁷

(My child was) made to feel unwelcome, mostly in Primary School.

Teachers have made my child feel dumb, inadequate and incompetent. (My child has been) told that he is not allowed to leave until work is completed although it is on his Individual Education Plan that he needs extra time.

My child...is doing class activities from the 'living skills' curriculum when he should be studying the mainstream curriculum at his age level.

The teacher straight out said (my daughter) "would be too hard to teach."

⁴⁴ United Nations Committee on the Rights of Persons with Disabilities 2016, *General Comment No. 4 on the Right to Inclusive Education*, s. 15.

⁴⁵ Ibid, s. 11 c.

⁴⁶ Audit Office of New South Wales 2016, *Performance Audit: Supporting students with disability in NSW public schools*, p. 21.

⁴⁷ Ibid, p. 21.

A smaller independent school told us they would not be able to accommodate our son before they met him or saw any reports. We stated that he was incredibly bright but needed support with social skills. They told us not to waste our time.

Inadequate Funding

Young people and families have raised a range of concerns consistently with CYDA regarding funding for students with disability in NSW. Key issues include barriers in accessing funding, insufficient amounts of funding available, funding being withdrawn, limited communication regarding funding applications and decisions and a lack of accountability around the outcomes funding is being used to support.

I think the process to receive funding or assistance is pathetic as well as heartbreaking. Our son could have been so much further ahead in his learning if the Department had policies in place that supported special needs kids regardless of their diagnosis! It was not until my son was FINALLY diagnosed with autism at age eight that we received funding and support. However the array of other support needs he has DIDN'T count toward helping him at school.

(My daughter) is not receiving assistance in class so is missing a lot of the learning...The teacher does not have the time to help her.

From the time of enrolment, I have been trying to get funding and support for my son but all I keep hearing is "he doesn't meet the criteria for funding"...It's heartbreaking to know the struggles my boy has.

At some point someone decided that my son was no longer eligible for funding because he was too 'functional.' He has dropped from being an above average student to an average one in three years.

There isn't enough funding to give (my daughter) the support that she needs for the whole day.

A significant concern is that it is commonly assumed by schools and families that there is no requirement for the provision of adjustments and modifications by schools unless the child concerned qualifies for *Integration Funding Support*. Despite a range of initiatives designed to increase awareness of obligations included in the Disability Standards for Education, such as through the *Every Student, Every School* initiative,⁴⁸ CYDA continues to hear that this incorrect assumption is made.

My son...would benefit most from a mainstream education with some additional support. This has been denied as his diagnosis does not attract any additional funding for a mainstream school. Instead he is forced into a support placement, segregated from the broader school community and denied any social opportunities.

(My child is) supposed to be receiving assisted support and adjustment to curriculum however this is not happening. (There is) no funding and learning support staff are too busy to help my child.

The school continue to refuse to use the equipment, resources and supports (my child) requires.

⁴⁸ New South Wales Department of Education 2012, *Every Student, Every School: Learning and Support*, Sydney, p. 13.

It is also critical that adequate funding is available to implement systemic reforms to ensure the education system can meet the needs of students with disability. This is discussed in further detail under term of reference E.

There are undoubtedly other critical areas of education reform required but it cannot be denied that adequate funding is vital to the success of any reform program implemented for students with disability. This is reflected in the inclusive education General Comment, which notes that appropriate financial and human resources must be invested to achieve a genuinely inclusive education system.⁴⁹

School Choice

School choice for students with disability is highly limited. Students with disability are frequently denied enrolment in their local school. Schools often state they 'do not have the capacity to support students with disability.' In other cases, families are made to feel so unwelcome or that their child would be such an inordinate burden that they are deterred from pursuing enrolment.

It is also reported to CYDA that students have such a poor experience at a particular school that families elect to change schools. In these cases, there is little choice, despite students not being formally denied enrolment.

I pay for my son to attend private school. He was refused at a public school (because his needs are too high).

Our local mainstream school said it wasn't their role to take (my child) and that I should go to a special school.

We wanted (our son) to go to our local Catholic school as I went there as a child. They weren't interested in having him there and said they wouldn't get the funding needed to support him and that we should put him in the public system.

Not every school officially refused enrolment but when we inquired it was made fairly obvious we were not welcome.

My son was expelled from our only zoned school in Grade One. The next two closest schools refused to accept him. I then began ringing around and more than 40 government primary schools refused to take him...In the end the education department said I could choose any school and they would compel the school to take him. I chose the least resistant school, which is a 30 to 45 minute drive from home.

CYDA is also increasingly being informed of students being home schooled or enrolling in distance education due to the sustained failure of the education system to meet their needs. This was recognised in the 2014 NSW inquiry into *Home Schooling in New South Wales*.⁵⁰ Again, this trend demonstrates that the school system is failing to meet the needs of students with disability.

⁴⁹ United Nations Committee on the Rights of Persons with Disabilities 2016, *General Comment No. 4 on the Right to Inclusive Education*, s. 67.

⁵⁰ Select Committee on Home Schooling 2014, *Home Schooling in New South Wales*, Parliament of New South Wales, Sydney, p. 28.

(My son) needs a scribe 80% of the time to help with decoding information and especially for maths. I was told this is impossible and we tried four schools. I now home school which was not my choice!

I was told that (my son's) physical disability was too "great" and that I would only get enough support for him for a couple of hours a week. I home schooled him for four years and eventually put him into a School for Specific Purposes where he learns very little.

Before enrolment in distance education, our child experienced bullying at a mainstream public school...This was a main reason for withdrawing our son from attending face to face school, after a great increase in already concerning anxiety levels.

Denial of Full Time School Attendance

Students with disability frequently experience discrimination in relation to school attendance. Schools often stipulate attendance cannot be full time and state this is due to lack of resources or capacity of the school.

I had to write a letter of complaint to the Department of Education to get (my son) a school placement...The support unit we tried refused to let him stay more than two hours a day.

The school was not equipped or trained to be able to provide a safe environment for my son...He was restricted to two hours a day and excluded from his class.

No support is being provided at present even though funding is still being given to the school for my son's enrolment. He is not attending school at all.

Workforce Capacity

Workforce capacity is of critical importance in ensuring access to a quality education for all students. Educational staff, particularly teachers and leadership positions within schools such as principals and year level coordinators, are key gatekeepers in terms of access to education. However, a lack of expertise regarding inclusive education and meeting the needs of students with disability among education staff is frequently reported to CYDA.

It is reported to CYDA that a lack of understanding about inclusive education among school staff, including valuing difference as a positive, is common. This informs negative attitudes that position disability as inability.

CYDA has also noted that 'inclusive education' is frequently misunderstood or misappropriated within the education system. Too often a student's physical presence in an education setting is mistakenly perceived to indicate the student's participation and inclusion. In other cases, the term 'inclusion' is manipulated to suit the existing practice of education providers.⁵¹ An example is segregated education settings being referred to as 'inclusive.'

(My child's) Year One teacher called him 'lazy' and would keep him in at lunch because he hadn't finished his work, no matter how many times his occupational therapist came and explained his (needs).

⁵¹ T Loreman et al. 2014, 'Conceptualising and Measuring Inclusive Education,' in C Forlin, T Loreman (eds.), *Measuring Inclusive Education*, Emerald Group Publishing Limited, United Kingdom, p. 5.

(My daughter) often gets forgotten and some teachers don't accept her dyslexia. She gets into trouble for not 'getting it.'

In (my child's) first high school, the staff working with the students lacked appropriate training and knowledge of disability issues and support options. The attitude was always that the students had to do better.

Further, CYDA is frequently informed of education staff lacking the required expertise to meet the specific educational needs of individual students. This represents a key barrier to students with disability accessing education.

In primary school if my son failed to understand a verbal instruction he was put in a corner and left without any work until he learned to listen. This meant that for many years his books were left empty and nothing was ever done about this. If he got upset at this treatment they would put him in a store room!

I would (like to see) more professional development for my child's teacher and more relief time for her to prepare lessons so my child is fully included.

(Teachers) try their best, but I feel my son misses out on a lot of activities due to their inability to assist him in participating.

(My son's) learning plan is never up to date. The demands on his teachers are great. He and they need support to deliver the best outcome for him.

Whilst (my daughter) gets some good support from teachers of the vision impaired she would benefit from more access to appropriate technology and training in how to use it, and for regular teaching staff to provide easy access to accessible materials such as electronic documents.

Work is very rarely individualised and is often too far above my son's current skill level therefore setting him up to fail.

I don't think (my daughter) receives enough support in the classroom due to limited training in alternative communication options.

My child doesn't get the attention required due to staffing limitations. He is not being engaged at school or encouraged to learn or try new things.

Another consequence of the lack of expertise within schools is the misidentification of behaviour support needs, with students frequently being viewed and treated as 'naughty.' Often, a disciplinary response to a student's behaviour support needs leads to use of punishment, including suspension and expulsion, rather than providing appropriate support.

Teachers do not understand when my child argues that he is trying to control his environment. They assume he is being disrespectful and punish, instead of explaining and supporting.

We did apply for a (different) school after many suspensions. The Principal told me that she wouldn't stop until (my son) was expelled.

My daughter...was suspended 12 times in two years by one high school she attended.

My child was suspended in term four for eight weeks. The first few days were full suspension, after that he was very slowly allowed back into the school day...All they did was isolate my son further for his anxiety and actually contribute to the problem.

(My child) was suspended eight times when he was in Grade Two...The school used suspension to legitimise their actions to remove us from the school.

The United Nations *General Comment on the Right to Inclusive Education* states that a key component of an inclusive education system is 'supported teachers and staff' who "receive the education and training they need to give them the core values and competencies to accommodate inclusive learning environments."⁵²

Exclusion

Students with disability frequently experience exclusion in schools. This includes complete exclusion from an educational setting, such as denied enrolment, as well as exclusion from particular aspects of the curriculum or school activities such as camps or sports days. There can also be a refusal of the school to make accommodations to ensure the student can participate, exclusion from classwork, activities and extracurricular activities or partial enrolment. This directly restricts opportunities for participation in learning and represents a barrier to accessing a quality, inclusive education.

(My daughter) has been kicked out of choir and may not attend camp this year as there is no support.

(My child was) excluded from excursions in the past. I was once told that "he wouldn't gain anything from it anyway!"

(My child) was denied access to mainstream performing arts and also languages last year. He was also excluded from maths until I intervened...The current Principal does not seem to believe in inclusion, citing cost as the main factor.

(In Primary School) my son was excluded from the playground, all excursions, including ones I volunteered to go on to accompany him, any school experiences that involved outside classroom working, sport, physical education and school carnivals.

If there is a school excursion one of us (parents) has to go otherwise our son wouldn't be able to attend. When school has a special presentation or assembly our son is left to sit with us, we expected he should stay with his class and be encouraged to join in.

Accountability

The present education system provides limited accountability for students with disability in relation to academic and other learning outcomes. Many existing measures of student attainment in the school system, including the National Assessment Program – Literacy and Numeracy (NAPLAN) and the Australian Tertiary Admission Rank (ATAR) or the Australian Early Development Index (AEDI) allow exclusions, with students with disability often not being included.

Some students have individual education programs but these contain goals that are established, implemented and evaluated by schools. There is a prevailing concern that there is no objective input

⁵² United Nations Committee on the Rights of Persons with Disabilities 2016, *General Comment No. 4 on the Right to Inclusive Education*, s. 11 d.

into this process or that collaboration with students and families regarding the development of Individual Education Plans (IEPs) is limited.

The teachers and aides do not consistently apply the supports agreed (upon in) the individual support plan and there is hardly any monitoring of this.

(My child's) IEP did not really have any goals listed for him.

Family School Engagement

The vast majority of families who contact CYDA are highly engaged in their children's education and are often or constantly experiencing conflict with their school due to the need to perpetually advocate for educational opportunities and participation for their child which are not afforded in the present inadequate system. Of further concern is the lack of communication from schools regarding education provision for students with disability. Key examples include a lack of consultation and communication around the development of IEPs or access to resources.

Many families are required to expend significant time and energy to ensure their children can access basic education entitlements. This constant need for vigilant advocacy combined with cultural and attitudinal resistance from school staff often leads to relationships between families and schools being conflictual. This creates an additional barrier to having issues resolved and families and schools developing collaborative relationships.

The support (for my child) is disjointed...and communication between the parents, school, aides and teachers, is not easy, reliable or clear.

An IEP has only been put in place after a lot of arguing with staff involved.

After pushing for funding and an IEP, it took a frustrating amount of time for the Principal to act on the documentation (from allied health professionals). Finally after a year we were involved in an IEP process.

Post School Transition

Post school transition refers to the period in which young people informally or formally consider and prepare for post school life. It is reported to CYDA that post school transition is typically a variable and ad hoc process for students with disability. This time is fraught with limited information and negative attitudes from schools, employment programs and further education providers. Valuable opportunities such as work experience or part time employment are also frequently denied. A comprehensive overview of issues relating to post school transition for students with disability is available in CYDA's issues paper, *Post School Transition: The Experiences of Students with Disability* (see Appendix B).

Abuse, Restraint and Seclusion

CYDA is frequently informed of students with disability experiencing abuse in education settings. This includes blatant examples that are clearly defined as abuse, such as physical and sexual assault. However, students with disability also experience incidents that are often not considered abuse because the child involved has a disability. Restraint and seclusion that is justified as 'behaviour management' is an example of this. Another example is students being denied the opportunity to use the toilet while on a school excursion.

CYDA is increasingly being informed of experiences of restraint and seclusion of students with disability. Restraint has been defined as "a range of programs, procedures, and psychosocial

techniques that can impede a person's exercise of choice and self-determination, all of which prevent people from being able to exercise human and legal rights that are ordinarily available to other members of the community."⁵³

Seclusion is "solitary confinement of a person in a room or area (e.g. garden) from which their exit is prevented by a barrier or another person. Seclusion involves situations in which people believe they cannot or should not leave an area without permission."⁵⁴ It is critical that restraint and seclusion is seen as abuse. This issue is discussed further under term of reference E.

An autism-specific school (restrained my daughter) regularly with little understanding of her as a person, her communication or developmental needs. She feared school.

(My child was) pinned to the ground by four staff...and (experienced) restraint by being locked in or out of rooms including the bathroom.

(My child's) Year One teacher would not allow him to go to the toilet when needed even though she had been told many times it could cause him to rupture his bowel or bladder if he is made to hold on.

(My son was) having a meltdown and was hiding under table and was dragged out.

My daughter was physically restrained, (she was) basically bear hugged in her seat so she couldn't get up. When my daughter has a meltdown she's locked in a room with three different adults.

(My child) has been locked in a classroom and left to just destroy it instead of trying to calm the situation before it gets to this point.

(A) child is placed in an area that is claimed to be a retreat, but is gated and the child cannot exit if they choose to. Teachers need to enter through two locked gates to reach the child. Food, drink and activities were previously seen to be passed through the bars of the gate.

The child was unwilling to attend school. A teacher came out to my car and physically removed the child from the car and then proceeded to carry him by the shirt collar and the pants waist (like a bag) up the driveway. The child curled up in my lap and went into a foetal position for 50 minutes.

(My child was) restrained and dragged by a teacher.

When (my daughter) was distressed she was put in a room by herself without supervision until she was picked up.

During mainstream schooling my son was locked in an office with the Principal. During a support class placement, my son reported being regularly physically abused.

(My child was) physically restrained from joining with other students at the Christmas parade.

⁵³ Australian Psychological Society 2011, *Evidence-Based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector*, Melbourne, p. 11.

⁵⁴ Ibid, p. 11.

On numerous occasions the school had restrained (my son) to stop him from chasing a boy who hurt him. This adds to sensory processing issues and is not beneficial for his sensory development as he already is tactile defensive.

(My child experiences) chemical restraint in the form of PRN for behaviours of concern. Physical restraints are used at mealtimes and during episodes of behaviour.

I discovered, from limited clues my son gave me, that he had been held in a 'time out room' on many occasions throughout the beginning of that year. Due to his poor expressive language he had not been able to tell me what had been happening. As a family we were totally devastated when we discovered what had been happening. The school acted well outside of departmental guidelines...we were NEVER informed when such methods were used, despite written requests demanding to know the full circumstances.

My son was grabbed by two teachers/aides, one on each arm. They dragged him backwards with his legs dragging across the floor. They put him outside in a fenced in area and left him there by himself. My son is not violent and could have easily been led away by taking his hand if he got upset.

My child has witnessed another child being kept in a restraint thereby appearing to normalise this behaviour. Whether you're in the restraint or looking at someone else who is restrained, (it) has an impact.

(A pelican) belt was used for a prolonged period without an occupational therapist or my approval. It was hidden under (my son's) shirt and left on for longer than the suggested time.

In April 2016 CYDA requested information about cases of abuse of students with disability through freedom of information legislation from each state and territory education department. CYDA requested:

Information regarding any complaints, investigations and outcomes regarding incidents of a child protection nature against employees where the alleged victim has been identified as a child with a disability. (CYDA sought) de-identified information regarding any complaints or incidents which occurred from 1 January 2014 to (24 March 2016). Complaints or incidents of a child protection nature would include those involving allegations of violence, abuse, neglect or exploitation (including restrictive practices). (It was requested that) the information include the date the allegation was received, employee type, initial allegation, outcome and action(s) taken as a consequence of the allegation.

The response of the NSW Department of Education is provided for the Committee's consideration (see Appendix C). The information provided consists of a table of 64 incidents containing the date, employee type, initial allegation and action taken regarding each incident. A range of highly concerning allegations are detailed, including cases of sexual, physical and emotional abuse of students with disability in NSW schools. Of the allegations included, it is reported that 21 were sustained but no action was taken in response.

CYDA is highly concerned about these allegations and the apparent disproportionate response by NSW education authorities. CYDA views these allegations as reflections of an education system in crisis with inadequate safeguards, responses and reporting requirements regarding the safety of students with disability.

Bullying

Bullying represents a persistent and chronic experience for many students with disability. This was clearly illustrated in CYDA's 2016 survey of the education experiences of students with disability, which found 52% of students with disability experience bullying nationally (51% of NSW respondents).⁵⁵ This is significantly higher than the 27% of the total student population who report bullying.⁵⁶

(My child's) school environment was tolerant of bullying despite Department of Education guidelines.

We had to take (our son) out of mainstream because he was relentlessly bullied, tormented, harassed and put in harm's way by teachers and peers.

(My child experienced) physical and verbal bullying, the Principal said "get used to it" and "don't tell mum when bad things happen."

My son experiences bullying on a daily basis. He has been threatened to be killed, stabbed and has been chased by a group of students where I found him hiding in a cupboard when I got home from work.

(My child) was pinned down and had a rotten apple core forced to his mouth.

My son repeatedly came home with bruises caused by other students during recess and lunch. The school never gave us any explanation.

(My daughter) has had teachers make negative comments about her reading in front of the class and show her drawing to the class and say "this is not how it should be done as it is too messy."

RESPONSES TO THE INQUIRY TERMS OF REFERENCE

A) Equitable Access to Resources for Students with a Disability or Special Needs in Regional and Metropolitan Areas

CYDA frequently hears of poor education experiences of students with disability in both metropolitan and regional areas. Further, it is CYDA's experience that the overarching systemic issues described above, such as a culture of low expectations, inadequate resourcing or a lack of expertise, typically confront the vast majority of students with disability regardless of geographic location. However, some issues are more pronounced for students with disability in regional areas, creating additional barriers.

A key issue is school choice. There are typically less available schooling options for students living in regional areas. For students with disability who experience discrimination regarding enrolment or in circumstances where a school is unable to meet the needs of students with disability, school choice is often extremely limited. CYDA has heard of students being required to travel significant distances to attend school or families being forced to move due to a lack of schooling options. Limited

⁵⁵ Children and Young People with Disability Australia 2016, *CYDA Education Survey 2016 - National Summary of Results*, Melbourne.

⁵⁶ D Cross et al. 2009, *Australian Covert Bullying Prevalence Study: Executive Summary*, Child Health Promotion Research Centre, Edith Cowan University, Perth, p. xxi.

transport options can also create a barrier to school attendance for students with disability in regional areas.

It would be great if (the government) would approve taxi travel for my son...I have to drive him 97km to school and back every day.

An additional concern relates to access to allied health services. Access to these services for children and young people with disability is often highly challenging due to no or limited availability and long wait lists. Allied health professionals such as speech pathologists or occupational therapists can provide valuable expertise to inform a student's educational program. However, where access to these services are limited, this creates a barrier to developing evidence based educational adjustments. It is also important to note that in many cases, when students do access allied health services regardless of geographic location, schools often do not allow their input into a student's educational program, leading to a similar poor outcome.

In smaller towns or areas young people and families have raised that their personal circumstances are often known within the community. Essentially the community knows 'their business' because of the intimacy that often exists in regional areas. This can have positive impacts, with community cohesion leading to positive and inclusive educational experiences for students. However, alternatively it can be difficult if conflict arises with schools which can then impact significantly as a family goes about their daily lives. For example, a mother informed CYDA about having a school incident involving her children discussed with her by staff and customers at the local supermarket.

CYDA has received some positive feedback regarding the education of students with disability in regional areas. In communities where the child or young person is well known to the school and there are limited schooling options, this can result in a positive and inclusive education experience. It is important to note that this typically depends on the leadership of key school staff and is not in any way guaranteed.

B) The Impact of the Government's 'Every Student Every School' Policy on the Provision of Education to Students with a Disability or Special Needs in New South Wales Public Schools

The *Every Student, Every School* (ESES) initiative was introduced into NSW public schools in 2012 and received initial funding through the Commonwealth *More Support for Students with Disabilities* initiative.⁵⁷ The aim of ESES is to establish a framework to "meet the additional learning and support needs of every student" by building capacity within the school system.⁵⁸ The initiative seeks to ensure that resources, support and expertise in meeting the needs of students with disability is available in mainstream schools, rather than solely disability specific education settings.⁵⁹

ESES has five key areas of activity, which focus on:

- Professional learning for skilled and knowledgeable teachers;
- Support for students with disability in regular classrooms;
- Special schools as centres of expertise;
- Understanding and assessing the learning and support needs of students; and

⁵⁷ New South Wales Department of Education 2012, *Every Student, Every School: Learning and Support*, p. 3.

⁵⁸ Ibid, p. 9.

⁵⁹ Ibid, p. 11.

- Access to information and expert support.⁶⁰

A key component of the initiative was the establishment of a *Learning and Support Teacher* role within each mainstream school. This role exists to provide support to teachers around meeting the needs of students with disability, as well as supporting students directly.⁶¹ ESES also involved a change in funding allocation and distribution arrangements for students with disability in NSW, but did not impact the overall amount of funding provided.⁶²

The implementation of ESES represented a significant shift in education provision for students with disability, which was previously primarily oriented towards providing individualised funding to students who meet the *Integration Funding Support* eligibility criteria. Information about ESES provided by the Department of Education positioned the program as reflecting the policy directions articulated in the National Disability Strategy, notably to “achieve greater inclusion of people with disability in all aspects of life.”⁶³

CYDA greatly welcomes this stated commitment to inclusion and many of the focus areas of the ESES initiative, particularly on increasing access to expertise and support to meet the needs of students with disability in mainstream schools. CYDA also supports the focus of ESES on instituting a cultural shift to ensure students with disability have the benefit of high expectations in relation to learning outcomes.⁶⁴

While there are positive elements of the overarching framework that guides ESES, the education outcomes for students with disability in NSW continue to be extremely poor in 2017. This suggests that the ESES initiative in its current form has not embedded the reform required to ensure students with disability can access a quality, inclusive education in NSW. A range of concerns regarding how ESES has been implemented have been reported to CYDA, which are discussed below.

A key issue relates to funding. Research about the impact of ESES conducted by the University of Sydney indicates that limited resourcing has impacted the capacity of the program to improve education provision for students with disability.⁶⁵ For example, it found that teachers continue to lack the necessary time to consider and develop appropriate accommodations and adjustments for students.⁶⁶ These findings reflect the direct experiences reported to CYDA, with inadequate resourcing continuing to be a key issue of concern for students with disability and families in NSW subsequent to the implementation of ESES.

In addition, CYDA is concerned that implementation of ESES has been variable and patchy between schools. The experience of students with disability is typically that where good practice occurs, it is generally the result of leadership from specific individuals or schools rather than a system wide approach. This has been an ongoing issue in education provision for students with disability, which has been perpetuated in the delivery of ESES.

⁶⁰ New South Wales Department of Education 2012, *Every Student, Every School: Learning and Support*, p. 11.

⁶¹ Ibid, p. 14.

⁶² M Rawsthorne et al. 2014, *Learning and Support in New South Wales Public Schools*, University of Sydney, p. 49.

⁶³ New South Wales Department of Education 2012, *Every Student, Every School: Learning and Support*, p. 6.

⁶⁴ Ibid, p. 9.

⁶⁵ M Rawsthorne et al. 2014, *Learning and Support in New South Wales Public Schools*, p. 73.

⁶⁶ Ibid, p. 71.

The University of Sydney research indicated that cases where schools and families report positive outcomes associated with ESES, it is likely to be due to pre-existing leadership or commitment to meeting the needs of students with disability.⁶⁷ This raises concerns regarding the capacity of the program to have an impact in schools that have an embedded ableist culture and are resistant to change.

In addition, CYDA is concerned that knowledge and understanding regarding inclusive education continues to be highly limited within the education system. This will inevitably impact the capacity of the ESES program to affect system wide change.

The continued lack of available expertise regarding meeting the needs of students with disability further exacerbates this. In a recent example reported to CYDA, a family member reported being highly exasperated as her child's school did not know where to go to get the required support to develop an appropriate, evidence based educational program.

The rapid implementation timeline for ESES has also raised concerns.⁶⁸ Despite representing a significant shift in education provision, there appeared to be minimal transition planning and communication to students and families was limited. This created significant confusion and exasperation among students with disability and families, who were not informed about the reform and the reasons it was being implemented.

This was a particular concern for students who were no longer eligible for individual funding due to changed resource allocation associated with ESES. Students and families have reported being informed at very late notice that individual funding would no longer be available. Often limited information was provided about why this was occurring. Students and families were therefore understandably resistant to this change. This highlights that consultation and collaboration with students and families as partners in this reform has been limited.

While the ESES initiative includes components that CYDA supports, significant refinement and review is required to ensure the program can meet its stated aims. It is also critical that the direct experiences of students are a key informant of this work. This could also include collaboration with the *NSW Education Standards Authority*.

Recommendation 2: Evaluation and review of the *Every Student, Every School* initiative, with a specific focus on whether the program aligns with research regarding inclusive education, as well as obligations contained in the United Nations *General Comment on the Right to Inclusive Education*.

Recommendation 3: Direct experiences of students with disability and families be a key informant of the comprehensive review of the *Every Student, Every School* initiative. This will require a range of consultation mechanisms with students with disability and families, including face to face, phone and written feedback.

C) Developments since the 2010 Upper House Inquiry into the *Provision of Education to Students with a Disability or Special Needs* and the Implementation of its Recommendations

The 2010 inquiry into *Provision of Education to Students with a Disability or Special Needs* highlighted a range of poor and inadequate education experiences of students with disability. In

⁶⁷ M Rawsthorne et al. 2014, *Learning and Support in New South Wales Public Schools*, p. 78.

⁶⁸ Ibid, p. 40.

particular, the inquiry report noted that: inadequate funding limits opportunities for students with disability to have equitable access to a quality education; processes for determining funding eligibility for students with disability are problematic; issues with support for students with disability in mainstream schools; and that professional support for educational staff can be improved.⁶⁹

The report made 31 recommendations focusing on different aspects of education provision, with some being partially or fully implemented. While there has been some reform since this inquiry occurred, overall CYDA has observed minimal meaningful change or improvement in education experiences and outcomes of students with disability in NSW.

A key focus of the 2010 inquiry was funding. The report found that “the general consensus among inquiry participants is that the level of funding for students in their respective sectors is significantly inadequate to allow students with disabilities or special needs to fulfil their educational potential.”⁷⁰ It made a range of recommendations regarding funding, including to increase the quantum of funding provided to students with disability, to develop a transparent funding mechanism and to improve communication with students and families regarding funding decisions.⁷¹ As discussed previously, a lack of funding remains a key barrier to accessing and participating in education for students with disability. This remains an unaddressed issue in education provision.

Numerous recommendations of the 2010 inquiry focus on expanding access to learning and support teams, access to expertise and professional development and teacher education. These issues have been a core focus of the ESES program, discussed above. While there has been some progress in implementing these recommendations, the preceding discussion highlights that further reform is required to ensure that the ESES program is effective in improving education experiences and outcomes of students with disability.

D) Complaint and Review Mechanisms within the School Systems in New South Wales for Parents and Carers

An extremely significant concern of students with disability and families is the lack of timely, independent mechanism to pursue complaints regarding education experiences.

Families typically follow a path when they have unresolved concerns which progresses from raising issues to: a teacher; the Principal; the regional education office; the education authority; a legal pathway; independent statutory authorities and/or letters to state or federal Members of Parliament. Often families are directed between jurisdictions and portfolios. The division of responsibility for the funding and delivery of education between the states, territories and Commonwealth further dilutes the available pathways for complaints.

Students and families who contact CYDA are frequently highly exasperated and stressed because their concerns are often unaddressed. Often there is limited communication regarding how a complaint is being responded to within the school or education department complaint systems. It is common for significant issues being unaddressed for extensive periods of time, further compounding the stress and disillusionment felt by students and families.

⁶⁹ General Purpose Standing Committee No. 2 2010, *The Provision of Education to Students with a Disability or Special Needs*, Parliament of New South Wales, Sydney.

⁷⁰ Ibid, p. 23.

⁷¹ Ibid, p. xxi.

It is currently the reality that disruptions to the schooling of students with disability are frequently prolonged and exacerbated due to the inadequacy of present complaint mechanisms. Further, poor complaints processes regularly heightens conflict between students, families and schools.

An example reported to CYDA involved a student who was denied access to appropriate behaviour support and suspended five times in 2016, including an additional month on top of the summer holidays. He remained out of school for months because the repeated complaints made by his family were not responded to in a timely manner. CYDA has also heard of students changing schools due to unaddressed complaints.

Families also report that schools and education authorities often become highly defensive, adversarial and litigious in response to complaints, further escalating any tension. Families sometime have no option but to undertake legal action through the courts as a result. However, many families do not have the capacity to enter into this extremely expensive and time consuming pathway. With significant resources often being invested to defend cases made against schools, families are often highly despondent at their prospects of achieving a resolution and risk losing further money in legal fees if their case is unsuccessful.

The direct experience of students with disability demonstrates that it is rare for acceptable outcomes or resolutions to occur. Many complaints mechanisms are prohibitively difficult, time consuming and expensive. This can lead to students spending months and sometimes years out of school and significant missed opportunities. This is an intolerable situation and it is critical that the lack of timely complaints mechanism is addressed.

In certain circumstances, students and families can also make a complaint to the NSW Ombudsman. The Ombudsman has powers to launch a formal investigation in some cases, however this typically is a further “long and complex” process.⁷² The Ombudsman’s Community and Disability Services Commissioner has been extremely collaborative and open in their work with CYDA regarding these complex issues for students with disability.

CYDA notes that the Department of Education *Disability Inclusion Action Plan 2016-2020* includes the identified outcome of “improved complaint handling processes that meet the needs of people with disability.”⁷³ The key action to support this outcome articulated in the plan is to “develop a revised complaint handling policy and procedure that address the needs of people with disability through enhanced accessibility, focusing on prompt local resolution and capturing data about complaint issues and complaint handling.”⁷⁴

This acknowledgement of the inadequacy of existing complaints mechanisms is welcome. There is a critical need to examine ways that complaint processes within schools and education authorities can be improved. This should also include a focus on responding to issues before they escalate and compound. CYDA is frequently informed of situations where concerns begin as minor issues but rapidly progress due to the failure of schools to adequately respond. In addition, review of complaint mechanisms should include a focus on ensuring schools and education authorities do not adopt an adversarial response to complaints from students with disability and families.

⁷² New South Wales Ombudsman 2017, *Our Options when Dealing with Your Complaint*, Sydney, viewed 24 February 2017, <https://goo.gl/p49kwD>.

⁷³ New South Wales Department of Education 2016, *Disability Inclusion Action Plan 2016-2020*, Sydney, p. 24.

⁷⁴ Ibid, p. 24.

Recommendation 4: Review of complaints mechanisms available to students with disability and families to inform the establishment of a timely, independent complaint mechanism for schools in New South Wales. This should involve consultation with students with disability and families and include a focus on ensuring schools and education departments can better respond to minor complaints to prevent escalation of concerns.

E) Any Other Related Matters.

Data

In recent years a significant amount of work has gone into improving available data about students with disability in Australian schools, primarily through the previously discussed NCCD. While this focus on improving data collected regarding students with disability is welcomed, CYDA has significant concerns about the process and quality of the data collected.

Key concerns relating to the reliability and validity of the NCCD data were highlighted in two evaluations of the trials conducted by PricewaterhouseCoopers:

- The data collection model ostensibly relies on teachers to make assessments regarding the level and types of adjustments students may require despite widespread acknowledgement of the limited expertise held and training available;
- The model attempts to collect data about individual adjustments in special schools where the whole setting is itself adjusted;
- Adjustments of typical teaching practices that accommodate variability in the needs of all students were not included in assessments of level of adjustment required;
- Time invested by volunteers and parents or carers to support students with disability was not included in assessments of levels of adjustment; and
- There are inconsistencies with identifying students with disability due to short time frames, difficulty obtaining consent and schools misunderstanding guidance materials.⁷⁵

It is CYDA's view that these issues are still unresolved areas of concern in the current data collection process. Further issues raised by CYDA in relation to the NCCD include:

- Documentation regarding the NCCD indicates that the data collection is measuring the present level of adjustment provision not the actual level of need;
- Presently there is limited capacity for families or allied health professionals with extensive knowledge of the student to directly input into the NCCD process; and
- It is unclear what the strategy will be regarding the use or analysis of the data, how it will guide the design and implementation of the funding loading for students with disability and what specific outcomes it will achieve in education systems.

As previously mentioned, the 2015 NCCD results stated that 18% of students were identified as having a disability through the data collection but also noted significant concerns about the quality of the data.⁷⁶ 17.9% of NSW students were identified as having a disability through the data collection.⁷⁷ These figures are significantly higher than the reported prevalence of disability among

⁷⁵ PricewaterhouseCoopers 2012, *2012 Trial of the Nationally Consistent Collection of Data on School Students with Disability*, Australia, PricewaterhouseCoopers 2014, *2014 Survey on the Additional Resourcing Provided for Levels of Adjustment for Students with Disability*, Australia.

⁷⁶ Education Council 2016, *Improving Educational Outcomes: Emergent Data on Students with Disability in Australian Schools*, p. 8.

⁷⁷ Ibid, p. 9.

children and young people aged 0 to 24 through the Australian Bureau of Statistics, which is 7.7%.⁷⁸ There are therefore significant questions regarding the reliability of the NCCD data in its present form.

While the NCCD has been a valuable initiative, it is critical that the process is refined to ensure a targeted, reliable and valid data collection process through their mechanisms. Further, while there have been limitations to this process to date, it is critical that issues relating to data do not act as a barrier to implementing urgently needed education reform for students with disability. Despite these data issues, direct experience and research shows there is a substantial unmet need for support of students with disability within the Australian education system including in NSW.

Recommendation 5: The New South Wales Government advocate for further refinement of the *Nationally Consistent Collection of Data on School Students with Disability* to ensure it is robust, reliable and valid.

Systemic Education Reform

As previously discussed, access to adequate funding continues to be a key barrier to participating in a quality, inclusive education for students with disability. The 2017 school year is now underway and the final loading for students with disability has not been implemented. Funding arrangements for students with disability also continue to be complex and unclear.

Further, the issue of school funding has become highly contested and politicised. There is frequent disagreement between state and Commonwealth governments regarding who has ultimate responsibility for school funding. This creates additional challenges in enacting funding reform for students with disability.

It is the view of CYDA that at this point in time there is a critical need to reframe the national conversation regarding school funding. This must involve injecting crucial policy considerations into funding debates and developing a plan for what funding will be used to achieve.

To date, discussions around funding for students with disability have primarily focused on individual adjustments for students. While this is undoubtedly crucial, it is also important that resources are invested in systemic reform. Given the substantial evidence base supporting inclusive education as best practice, CYDA strongly believes inclusion needs to be at the heart of future education reform. This could be achieved through the development of an education plan for students with disability. CYDA has previously advocated for a national plan with state partnerships, however a NSW specific plan would also be of significant value.

It is imperative any plan developed has clearly articulated aims, objects and measureable outcomes. The overarching vision of the reform needs to align with Australia's human rights obligations pertaining to the education of students with disability, articulated in the CRC, CRPD, the National Disability Strategy and the *General Comment on the Right to Inclusive Education*. Links to existing work and initiatives, particularly the ESES initiative, are also highly important.

Further, the plan needs to be guided by evidence regarding inclusive education. Inclusive education is a fundamental right of all students and it is therefore imperative to ensure that this option is available for every child. Creating an inclusive education system will not happen overnight. Recognition that this is not a choice afforded to every student with disability needs to occur. The

⁷⁸ Australian Bureau of Statistics 2016, *Table 1.1 Persons with Disability, by Age and Sex—2003, 2009, 2012 and 2015, Estimate*.

plan would therefore need to include the various components of an inclusive education, as outlined in the United Nations General Comment. These include resourcing, developing a culture of inclusion in all schools, access to expertise, appropriate teacher education and professional development and more.⁷⁹ Further information about inclusive education is available in CYDA's issues paper, *Inclusion in Education: Towards Equality for Students with Disability* (see Appendix D).

Finally, it is critical that this work is informed by the direct experiences of students with disability and the work of CYDA. Meaningful and embedded reform must be enacted to improve the education experiences of students with disability, rather than short term or bolt on initiatives.

Recommendation 6: Development of a plan to articulate reform to progress the realisation of the right to inclusive education for students with disability in New South Wales. This reform must be informed by United Nations *General Comment on the Right to Inclusive Education* and the direct experiences of students with disability.

Abuse, Restraint and Seclusion of Students with Disability in Schools

It is critical that action is taken to prevent abuse of students with disability in education settings, including restraint and seclusion. CYDA is frequently informed of abuse of children and young people with disability in education settings.

While CYDA is aware that the NSW reportable conduct legislation requires reporting of sexual offences, assault, neglect and psychological harm of children,⁸⁰ a key barrier is that abuse of children and young people with disability is often not recognised as such. Research and direct experience indicates that abuse of children and young people is frequently accepted and not recognised due to prevailing ableist attitudes within the community.

Recent inquiries have highlighted a range of important considerations regarding child safeguarding, particularly the *Royal Commission into Institutional Responses to Child Sexual Abuse* and the Victorian inquiry into *the Handling of Child Abuse by Religious and Other Non-Government Organisations*. Recent reform in Victoria requires all organisations that provide services to children to ensure that they implement child safe standards.⁸¹ Organisations must consider how the standards will be applied to children with disability, recognising the increased vulnerability of these children to abuse.

CYDA notes that while work regarding child safe standards for organisations in NSW is currently being progressed by the Department of Families and Community Services and the Office of the Children's Guardian,⁸² these standards are not mandatory. It is the view of CYDA that like Victoria, NSW should implement mandatory child safe standards for all organisations that work with children, including schools, that have a focus on the specific experience and vulnerability of children with disability.

CYDA also notes that the protections included in the recently released *National Disability Insurance Scheme Quality and Safeguarding Framework* do not have jurisdiction over supports provided by

⁷⁹ United Nations Committee on the Rights of Persons with Disabilities 2016, *General Comment No. 4 on the Right to Inclusive Education*.

⁸⁰ New South Wales Ombudsman 2017, *Reportable Allegations and Convictions*, Sydney, viewed 24 February 2017, <https://goo.gl/OVe7Y5>.

⁸¹ Commission for Children and Young People 2016, *Child Safe Standards*, Government of Victoria, viewed 24 February 2017, <https://goo.gl/BS4Phf>.

⁸² Office of the Children's Guardian 2017, *Become a Child Safe Organisation*, Government of New South Wales, viewed 24 February 2017, <https://goo.gl/qkAZ6U>.

educational authorities except where they are NDIS-funded supports.⁸³ Practically this will mean that it will have minimal application to schools.

A further critical issue relates to current Department of Education policies and guidelines regarding abuse of students with disability. This was highlighted in a recent case reported in the media, where a student who had experienced peer to peer sexual assault was questioned by their school Principal, without a parent present.⁸⁴ Concerns were reported that this was supported by departmental protocol, with the judge stating "there appears to be a protocol in place in NSW schools which permits not only interrogation of children without adults present, but the interrogation of children with learning difficulties — the result of which are made available to the police."⁸⁵ There is therefore a critical need to review related policies.

In relation to restraint and seclusion, education settings are typically outside the jurisdiction of relevant policy and oversight. For example, the 2013 *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* does not include schools. This represents a significant gap in protections for children with disability.

It is imperative that restraint and seclusion is recognised as abuse. There is a clear and urgent need to ensure that best practice in behaviour support is adopted in education settings. This should include clear guidelines and strategies to eliminate the use of restraint and seclusion.

CYDA is aware that a number of schools in NSW have reportedly adopted the Positive Behaviour for Learning approach to behaviour support since 2005.⁸⁶ However, given the breadth of concerns still regularly reported, including common incidents of restraint and seclusion of students with disability in NSW, CYDA questions if this framework is resourced adequately and implemented with fidelity. There is an urgent need to examine the barriers to implementing best practice in behaviour support. The NSW Ombudsman is currently conducting an inquiry into *Behaviour Intervention and Support in Schools*, which CYDA greatly welcomes and is very hopeful that it will provide specific information and analysis that can inform this process.

Recommendation 7: Legislated requirement that all organisations in New South Wales that provide services to children, including schools, implement child safe standards that include a specific focus on the needs and considerations for children with disability.

Recommendation 8: Review of current policies and guidelines regarding responses to allegations of abuse of students with disability in schools.

Recommendation 9: Implementation of a strategy to eliminate the use of restraint and seclusion on students with disability in all New South Wales schools and ensure state-wide availability of best practice in behaviour support in all education settings which aligns with national framework.

⁸³ Australian Government Department of Social Services 2016, *NDIS Quality and Safeguarding Framework*, Commonwealth of Australia, Canberra.

⁸⁴ G Wakatama 2017, 'Judge Slams NSW Education Interrogation Protocols after School Peer Rape Case,' *Australian Broadcasting Corporation*, viewed 24 February 2017, <https://goo.gl/Nla1es>.

⁸⁵ Ibid.

⁸⁶ New South Wales Department of Education 2017, *Positive Behaviour for Learning (PBL)*, Government of New South Wales, Sydney, viewed 24 February 2017, <https://goo.gl/rgcM5V>.

Education and National Disability Insurance Scheme Interface

Rapid reform is currently occurring with the implementation of the NDIS. The NDIS represents a significant shift from the previous model of providing block funding to disability services to providing portable and individualised funding packages.⁸⁷ The core principles underlying the NDIS are to:

- support the participation and inclusion of people with disability in social and economic life;
- provide certainty around disability services and supports;
- maximise the choice and control of people with disability around supports received; and
- support people with disability to achieve their goals and live independently.⁸⁸

The NDIS was launched in July 2013 in several trial sites across the country. On 1 July 2016, the NDIS commenced its national rollout beyond the initial trial sites. The Scheme will be fully operational by July 2019, when it will be accessed by an estimated 460,000 people with disability.

The interfaces with mainstream sectors are critical to the success of the NDIS, given the Scheme's defined goal of supporting inclusion and participation of people with disability in all areas of the community. It is imperative that there are clear processes regarding coordination, assessment, entry points and evaluation between these life areas. Traditionally education and disability services have been distinct policy and practice areas. The challenge now is to forge a shared pathway with the mutual goals of ensuring the specific needs and supports of children with disability are better identified and provided.

To date the work around the NDIS interface with education is not well advanced with a complex web of considerations across multiple jurisdictions. Addressing interface issues will involve defining clear roles and lines of responsibility, funding arrangements, present gaps in service provision and ensuring effective collaboration occurs.

Key considerations are discussed in detail in CYDA's 2012 issues paper *The Emerging Picture: The Education and NDIS Interface*. While this paper was released prior to the implementation of the Scheme, many of the issues discussed are still relevant. This paper is attached for the Committee's consideration (see Appendix E).

Recommendation 10: The National Disability Insurance Agency and the New South Wales Department of Education and Training progress as a priority work to define and operationalise interface arrangements for the National Disability Insurance Scheme and education. It is viewed as critical that this process includes consultation with CYDA to ensure the direct experiences of students with disability informs this vital area of work.

CONCLUSION

The experiences and outcomes of students with disability in NSW continue to be extremely poor. It is the view of CYDA that the present education system is not adequately meeting the educational needs of students with disability with many being denied a quality and inclusive education.

CYDA is extremely concerned that the marked increase in reports of restraint, seclusion and violence experienced by students with disability in NSW. It is believed that this is directly related to the systemic failings of the current education system to provide a safe and enriching learning environment for students with disability.

⁸⁷ *National Disability Insurance Scheme Act 2013 (Cth)*, s. 2.3.

⁸⁸ *Ibid*, s. 2.3.

Strategic reform that is adequately resourced to affect embedded change for students with disability is urgently needed. This must involve a focus on both systemic reform and individual adjustments and include specific actions in relation to school culture, access to expertise, teacher education and more.

The direct experiences of students with disability clearly demonstrate that reform cannot be restricted to short-term initiatives. CYDA recommends that a plan for education reform for students with disability which clearly articulates and drives the urgent and critical reform needed is developed. A clear timeline is also needed to ensure and it is critical that this work is a priority of the NSW government. The Australian community has embraced the right for people with disability to be afforded maximum opportunities for social and economic participation. It is CYDA's view that this cannot be achieved unless children and young people with disability can access a quality education.

SUMMARY OF RECOMMENDATIONS

Recommendation 1: Education be a key focus area in future New South Wales Disability Inclusion Plans and implementation strategies and associated actions align with the United Nations *General Comment on the Right to Inclusive Education*.

Recommendation 2: Evaluation and review of the *Every Student, Every School* initiative, with a specific focus on whether the program aligns with research regarding inclusive education, as well as obligations contained in the United Nations *General Comment on the Right to Inclusive Education*.

Recommendation 3: Direct experiences of students with disability and families be a key informant of the comprehensive review of the *Every Student, Every School* initiative. This will require a range of consultation mechanisms with students with disability and families, including face to face, phone and written feedback.

Recommendation 4: Review of complaints mechanisms available to students with disability and families to inform the establishment of a timely, independent complaint mechanism for schools in New South Wales. This should involve consultation with students with disability and families and include a focus on ensuring schools and education departments can better respond to minor complaints to prevent escalation of concerns.

Recommendation 5: The New South Wales Government advocate for further refinement of the *Nationally Consistent Collection of Data on School Students with Disability* to ensure it is robust, reliable and valid.

Recommendation 6: Development of a plan to articulate reform to progress the realisation of the right to inclusive education for students with disability in New South Wales. This reform must be informed by United Nations *General Comment on the Right to Inclusive Education* and the direct experiences of students with disability.

Recommendation 7: Legislated requirement that all organisations in New South Wales that provide services to children, including schools, implement child safe standards that include a specific focus on the needs and considerations for children with disability.

Recommendation 8: Review of current policies and guidelines regarding responses to allegations of abuse of students with disability in schools.

Recommendation 9: Implementation of a strategy to eliminate the use of restraint and seclusion on students with disability in all New South Wales schools and ensure state-wide availability of best practice in behaviour support in all education settings which aligns with national framework.

Recommendation 10: The National Disability Insurance Agency and the New South Wales Department of Education and Training progress as a priority work to define and operationalise interface arrangements for the National Disability Insurance Scheme and education. It is viewed as critical that this process includes consultation with CYDA to ensure the direct experiences of students with disability informs this vital area of work.

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