

A level playing field? HSC Disability provisions

**A Special Report to Parliament
under s.31 of the *Ombudsman Act 1974***

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**NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000**

**Phone 02 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: 02 9283 2911
Telephone typewriter: 02 9264 8050
Website: www.ombo.nsw.gov.au
Email nswombo@ombo.nsw.gov.au**

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Foreword

This report reviews the current system for making HSC disability provisions applications (applications). This is a thorny issue and it is easy for some to jump to conclusions. It touches on already existing tensions such as the public versus private education debate, advantaged versus disadvantaged students and whether students with a disability are getting a fair go.

We look at the facts and review them impartially in order to really understand what is happening and to find practical ways of making the current system better and more accessible for all students with a disability. We also reach conclusions about why data consistently shows the percentage of applications for public school students is half that of students from independent schools.

Our investigation found that the Board of Studies (the Board) has a rigorous process for administering applications. However, as a result of this rigour the process is time consuming and in some cases confusing for schools. We found no evidence that the Board is approving unwarranted applications.

We also found that a school's culture, resources and expertise in managing disability issues are significant factors in influencing whether an application is made or not. The combination of those factors means that some schools are better at identifying and meeting the needs of students with a disability than others.

About 15% of schools from the independent and public school sectors make no applications. Some public schools in low socio-economic areas make high numbers of applications and others do not. Some independent schools make no applications while others have consistently high numbers. By comparison applications are received from nearly 100% of Catholic schools every year.

The Department of Education and Communities' (the department) federally funded initiative 'Every Student, Every School' seeks to increase and improve the knowledge of teachers about how to meet the learning needs of students with a disability. This important initiative aims to address issues that are central to this report.

Both the Board and department have indicated they are committed to making improvements to the system. They worked co-operatively with our office to ensure the recommendations in this report are workable and will add value.

I anticipate continuing to work constructively with the Board and the department to monitor implementation of the required changes.

I decided to make this a public report because of the significant level of community interest in the issues arising from the proportionally lower number of applications from public school students. My intention is to encourage informed debate, raise awareness about what needs to be done to improve the current system and bring about real change.



Bruce Barbour
Ombudsman

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Chapter 1. Overview

1.1. Why we investigated disability provisions for the HSC

HSC disability provisions¹ are intended to create a level playing field for students. This means that a student's disability should not prevent them from reading the examination questions or communicating their responses. Students with a disability are entitled to apply to the Board of Studies (the Board) for adjustments when they sit their HSC exams. Making adjustments for disabilities in an educational setting is a legal requirement.²

The statistics published by the Board³ show the percentage of disability provisions applications from HSC exam students in public schools are roughly half that of students in the independent sector and 25% less than the Catholic sector. In 2011 applications were made by:

- 11% of 16,461 students from independent schools
- 8.1% of 11,731 students from Catholic schools
- 6% of 41,543 students from public schools.

The data for every year since 2005 shows similar percentages – that is, the number of applications for students from public schools is significantly lower than for students in the Catholic and independent sectors.

The media reports on this discrepancy each year usually after the release of new data. The Board is generally criticised in those reports for not adequately policing a system which allegedly allows students from more affluent backgrounds to gain an unfair advantage. On the face of the available data, it is not surprising that many people would reach that conclusion.

In October 2011 we asked the Department of Education and Communities (the department) some questions about this issue.⁴ As a result of the department's advice we identified a number of questions:

- Why is the percentage of public school applications proportionally lower when the department believes the majority of students with a disability are in public schools?
- Why do some independent schools have such high percentages of applications?
- If the Board is policing the process effectively, what is happening in schools to produce the disproportionate number of applications reflected in the data?
- Are more affluent students over-represented and public school students under-represented?
- Is the system fair?
- Should the system be changed?

We were also concerned about the public perception as a result of the media stories that the Board may not have been performing its functions in an equitable way. We recognised it was possible that there might be valid reasons for the statistics that we were not aware of. We needed to have a more rigorous understanding of the underlying causes before we could reach any conclusions. We therefore decided to use our formal powers under the Ombudsman Act to investigate.

1 Previously known as special provisions. The Board changed the name to better reflect the purpose of the provisions which is to comply with the disability discrimination legislation and the relevant standards in education.

2 *The Disability Discrimination Act 1992* including the Disability Standards in Education 2005 and *NSW Anti-Discrimination Act 1977*

3 Board of Studies website http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/2005-2011-disability-provisions-by-sector-students.pdf

4 We made inquiries with the Department of Education and Communities pursuant to section 13AA of the *Ombudsman Act 1974* in October 2011. The department responded in November 2011.

1.2. What we found

1.2.1. Board of Studies

The evidence we examined in this investigation strongly suggests the Board's processes for dealing with applications are rigorous and do not favour one sector over another. We reviewed a sample of individual applications and considered four reports conducted from 2008 to 2011 commissioned by the Board about the application process.⁵ These reports and our own investigation found no evidence the Board is approving unwarranted applications from any sector.

The Board wants to make sure that the application process is above criticism and to protect its reputation. This is understandable and reasonable but, by making the bar higher to prevent unwarranted applications, it becomes more difficult for disadvantaged students to access the provisions they are entitled to.

In particular, the Board's general requirement for a health report to confirm the diagnosis of a disability is a significant barrier for disadvantaged students. As a large proportion of disadvantaged students are in public schools, this is likely to have an impact on the number of disability provisions applications that the public school sector makes.

If the Board is making fair and reasonable decisions this means that the issue is not about unfair advantage for independent school students but about improving access to and increasing the use of provisions for disadvantaged students.

1.2.2. Department of Education and Communities

Public school students with a disability are under-represented in disability provisions applications made to the Board. Based on the evidence we examined we concluded this is due to a combination of factors including: students' socio-economic circumstances, negative perceptions about seeking and accepting provisions, demands on school resources and school cultures that do not implement, or fully understand, how to make adjustments as required by the *Disability Discrimination Act 1992*.

The demands of the application process, in combination with the culture in some schools which may not understand the importance of making applications, can result in fewer applications. The department is aware that some schools respond to the needs of students with a disability well and others do not.

We visited some public schools with significant challenges that made higher than average numbers of applications. The staff in those schools saw it as an integral part of their role and an essential element in helping students to achieve their very best.

The data on applications is a potential indicator of how well a school is managing the disability and learning needs of individual students. The Board provides data to the department on the number of applications for public schools. We have seen no evidence that the department fully analyses or reviews this data, despite its potential to assist in the identification of systemic issues.

Currently public school principals are not obliged to attend training about a school's legal obligation to comply with disability discrimination legislation. It will be difficult for principals to adequately drive the changes needed in schools if they are not fully aware of the legislation and what reasonable accommodation for students with a disability means in practice. Proposed training as part of the implementation of the department's 'Every Student, Every School'⁶ initiative should help improve awareness amongst public school staff.

5 Reports on the Board of Studies website about the disability provisions application process from 2008 to 2011 <http://www.boardofstudies.nsw.edu.au/disability-provisions/reports.html>

6 NSW Department of Education and Communities Every Student, Every School Learning and Support March 2012 <https://www.det.nsw.edu.au/media/downloads/about-us/how-we-operate/national-partnerships-program/every-student-every-school/learning-and-support.pdf>

1.3. Broader issue

When we commenced this investigation the focus of our inquiries was on the relatively discrete issue of the Board's administrative practices for dealing with applications. It became evident early on in the investigation that how well or otherwise schools deal with applications is a strong indicator of their attitude towards students with disabilities and learning needs in general.

Getting it right for students with disabilities and other learning needs should not be about what happens in Year 12 when a student is about to sit their HSC exams. Schools with a strong pastoral care ethos and robust understanding of their obligations under the Disability Discrimination Act identify and make adjustments for students who need learning support and assistance from Year 7. An application during the HSC is then just one element of the ongoing support provided to the student throughout their school career.

As well as making a range of practical recommendations about administrative and other tangible changes to practice, this report also makes clear the importance of school culture and its significance on the lives and experience of students with disabilities.

From our interviews with a wide range of teaching and other school staff it is possible to identify some common elements of good practice when dealing with the application process and individual learning needs of students more generally. Many are about leadership by principals and senior teaching staff.

Best practice requires:

- **leadership, including a principal:**
 - with a clear understanding of the school's obligations to make reasonable adjustments for students with a disability and/or learning need as required by the Disability Discrimination Act;
 - who fosters a culture of inclusiveness and individual achievement in the school community;
 - who supports learning support staff to provide help and advice to teachers to improve skill levels at managing students' differing needs in the classroom.
- **a school culture, attitude and practices:**
 - which sees the value of maximising individual learning outcomes for students regardless of academic ability and create an atmosphere where students feel comfortable asking for help;
 - that works at establishing a good relationship with students and families and have an established welfare/pastoral care focus;
 - that identifies students' disabilities and related learning needs early, including universal testing in Year 7, and remind teachers in different ways about their role in identifying and implementing adjustments;
 - that looks beyond behavioural issues to understand if there might be an underlying learning difficulty;
 - that provides administrative support for staff responsible for administering disability provisions applications;
 - that encourages and enables students that need provisions to use them throughout their school career;
 - that has documented policies and procedures about how learning needs are managed at the school, including the disability provisions application process.

Chapter 2. Our investigation

2.1. Conduct the subject of investigation

We issued investigation notices in May 2012 into the actions and inactions of the Department of Education and Communities (both Public Schools and the Board of Studies) in relation to the adequacy, application and effectiveness of the policies and procedures used in making and administering disability applications for HSC students.

2.2. Methodology

2.2.1. Production of information and documents

We asked for the following:

- all information relating to applications for the 13 schools we selected to examine in detail and HSC results by band for those students in 2011
- HSC results by band for students in 2011 with approved applications from eight independent and one public school that make up the Athletic Association of the Great Public Schools of New South Wales (GPS)⁷
- position descriptions of Board of Studies Liaison Officers (BOSLOs) and all data on visits made by BOSLOs including by school sector for 2011.

2.2.2. Review of application data

We reviewed 161 applications from 13 schools. We looked at health reports, correspondence, teachers' comments and all other documentation.

We received comprehensive data spreadsheets and did our own analysis of the statistics.

2.2.3. Interviews

We met with the Chief Executive Officer and other senior staff of the Board. We interviewed an experienced BOSLO to better understand the role and gain a working knowledge of what happens in practice.⁸

We met with one of the department's Regional Directors and a representative from the Disability Programs Directorate.

We met with the authors of the *'Review of the Higher School Certificate Disability Provisions Program'* (2011)⁹ who were engaged by the Board to conduct an independent review.

2.2.4. Visits to schools

We visited 13 schools and met with staff who are responsible for organising applications to the Board. We selected public schools on the basis of higher and lower than average applications for their sector

7 Athletic Association of the Great Public Schools of New South Wales (GPS). Member schools include The King's School, Sydney Grammar School, Newington College, Saint Ignatius College, St Joseph's College, Sydney Boys High School, Sydney Church of England Grammar School, The Scots College and The Armidale School

8 BOSLOs visit schools and provide training, advice and clarification on the curriculum and exam functions of the Board. Providing advice about disability provision applications is part of their role.

9 Review of the Higher School Certificate Disability Provisions Program - A Review Commissioned by the Board of Studies 2011 http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/disabilities-provisions-review.pdf

from urban and regional areas. The Catholic and independent schools had higher than average numbers of applications for their respective sectors.

We met with staff and principals, asked prepared questions and gathered general information.

2.2.5. Data analysis

We collated data from the MySchool website to make comparisons between the schools including student/teaching staff ratio, student/non-teaching staff ratio, Index of Community Socio-Educational Advantage (ICSEA), Aboriginal students and the percentage of disability provisions applications for 2011. The data is helpful in gaining some understanding of the level of resources available to a school including the number of teaching and non-teaching staff and the level of need determined by ICSEA. While the information is not definitive, it gives us some background about the schools we visited.

2.2.6. Meeting with Victorian Human Rights and Equal Opportunity Commission

We met with the Victorian Human Rights and Equal Opportunity Commission to discuss their report *'Held back: The experience of students with a disability in Victorian Schools'*.¹⁰

2.2.7. Comments and submissions

At the conclusion of the evidence gathering stage of our investigation we gave the Board and department an opportunity to comment on a document containing our provisional findings and recommendations. We also met with both agencies to discuss the document.

10 Held back: The experience of students with a disability in Victorian Schools 2012 http://www.humanrightscommission.vic.gov.au/media/k2/attachments/1404-VEOHRC_HeldBack_-_StudentwithDisabilityReportW3.pdf

Chapter 3. Current context, roles and responsibilities

3.1. Role of the Board of Studies

The Board administers the application process, produces guidelines, information and liaises with schools. The *Disability Discrimination Act 1992* requires the Board to assess and accommodate students' special needs if they prevent a student from fairly reading or responding to an examination.

The Board may approve provisions for the HSC examinations if a student has a permanent or temporary disability that would, in a normal examination situation, prevent him or her from:

- reading the examination questions and/or
- communicating his or her responses.

The purpose of the provisions is to reduce disadvantage but must not confer an advantage on a candidate.

The Board has a set of principles to guide decisions about the types of arrangements to enable students with a disability to best access the HSC examinations. The principles were developed to ensure that the Board complies with the Disability Standards in Education (2005)¹¹ which come under the *Disability Discrimination Act 1992*. The types of provisions are outlined on the Board's website.

3.2. What is a provision?

Many of the HSC disability provisions are neutral and are approved by schools without having to go through an involved application process, as long as the Board is notified. These include the use of cushions, special furniture, special food or drink and natural lighting. A list of common provisions and requirements are on the Board's website.¹²

Some provisions that might give an advantage in an exam if unwarranted are extra time and rest breaks usually of up to five minutes per half an hour. The types of situations that would be covered might include difficulty in reading and writing, severe spelling difficulty that impedes communication, anxiety, hand/arm problems, illegible handwriting, chronic fatigue and chronic physical difficulties.

There is a rigorous process that must be followed in seeking approval for these types of provisions from the Board usually including the provision of health reports and evidence of how it impacts on the student's ability to perform in an exam. In our review of the applications we saw firsthand the type of information that was provided and how applications could not be approved without evidence.

The full list of frequency and types of provisions from 2009–2011 are available on the Board's website.¹³ A school is responsible for making an application on behalf of a student and usually nominates a staff member to coordinate this. That person is responsible for lodging and following up applications, both internally and externally. They are often the same people involved in giving advice to teaching staff about making adjustments for students in the classroom. They usually have a good understanding of the impact of the disability on a student's educational performance and potential.

11 Links to the Disability Standards for Education 2005 and guidance notes <http://deewr.gov.au/disability-standards-education>

12 Board of Studies - Assessment Certification Examination manual website <http://ace.bos.nsw.edu.au/ace-10006>

13 <http://www.boardofstudies.nsw.edu.au/disability-provisions/statistics-frequency-distribution-2009-11.html>

Case study 1

A public school teacher told us about a student with autism who needed prompting to turn the page in an exam or he would sit doing the same question over and over. The initial application to the Board was declined. He did not know why. He applied again and the provision was approved on appeal.

The Board will not accept applications directly from a student or a parent/carer. This means a school is the gatekeeper in the process and must prove to the Board how the disability impacts on the student's exam performance. Once an application is made with the relevant supporting documentation it is approved, partially approved or declined by the Board. Schools can appeal unfavourable decisions.

We heard from schools about the increase in and debilitating nature of mental health issues on students. Teachers told us that anxiety and other mental health conditions which impact on some students in exam situations is very real.

Case study 2

A very bright student with anxiety also needed prompting to move on to the next question. It was difficult to convey this to the Board as the student performed very well in timed assignments.

There are a high and growing number of students with disabilities in NSW public schools. It is estimated that from 2005-2009, the incidence of mental health disorder and autism increased by 36% and 88% respectively.¹⁴ Teachers need good judgement, expertise and guidance in order to identify and accommodate learning needs for those students.

Case study 3

A public school in a disadvantaged area told us that due to teachers having a better understanding of disability they will now ask for writers in exams for students with extremely poor handwriting. The students will sometimes know the answers to questions but if the marker can't read them they will lose marks.

All schools we visited told us that making applications to the Board took time and effort. Schools are aware that the time spent by specialised staff completing an application could be spent working with students.

The Board is very clear there are two essential criteria that must be satisfied before an application will be approved:

- A student must provide evidence to confirm a disability as defined in the Disability Discrimination Act.
- The application must demonstrate how the disability impacts on a student's ability to perform in an exam.

3.3. Department of Education and Communities

In 2012 NSW Public Schools had responsibility for educating 740,000 students. Policies and procedures are set by the department and schools are expected to comply. Public schools have a legal obligation to educate all eligible students within their enrolment area.

¹⁴ The Psychological and Emotional Wellbeing needs of Children and Young People: Models of Effective Practice in Educational Settings – Final Report Prepared for the Department of Education and Communities 2011 p.29 <https://www.det.nsw.edu.au/media/downloads/about-us/statistics-and-research/public-reviews-and-enquiries/school-counselling-services-review/models-of-effective-practice.pdf>

In relation to HSC disability provisions, the department told us that all schools are responsible for meeting the learning needs of individual students in accordance with the Curriculum, Planning and Programming, Assessing and Reporting to K-12 policy. The policy contains no specific reference to the HSC disability provisions and schools rely on the information from the Board's website. The Board's Assessment Certification Examination website advises that:

*Schools are responsible for any decisions made at school level to offer provisions to students with a disability in course work, assessment tasks and in-school tests.*¹⁵

The department does not require individual schools to have their own policy and procedures about making applications.

3.3.1. Every Student, Every School

The department told us the most significant initiative to improve the experience of students with disabilities and/or learning needs in public schools is 'Every Student, Every School'.¹⁶ The federal government will provide \$47.9 million to public schools over two years.

Understanding legal obligations

Introduced at the end of Term 1 2012, the main focus of 'Every Student, Every School' is on training and raising awareness among teachers about their legal obligations under the Disability Discrimination Act and increasing their skill and expertise in supporting students with a disability and/or learning needs. A federal review of the Disability Standards in Education 2012 found that:

*General awareness across education sectors, users and providers and the general community about the Standards is considered low.*¹⁷

The objective of the initiative, as stated in the National Partnership Agreement for More Support for Students with Disabilities¹⁸, is:

17. Australian schools and teachers are better able to support students with disabilities, contributing to improved student learning experiences, educational outcomes and transitions to further education or work.

Funding changes for students with learning needs

'Every Student, Every School' changed the way the department funded learning needs in schools. Previously schools received funding for students with a disability enrolled in regular, or mainstream, classes if they met criteria which in the main were based on a clinical diagnosis of disability by medical professionals. In practice this meant that some schools focused on making adjustments for students with a diagnosed disability. The funding model did not encourage teachers, or schools, to focus on the lower level needs of students who might be struggling due to other learning difficulties or conditions that were not diagnosed. This meant that students with lower level needs could be overlooked.

Although there has been no increase in overall funding with the introduction of 'Every Student, Every School', the department re-organised some of the existing specialist support services and allocated directly to schools 1,800 specialist teachers that were previously not available in every school. This resulted in the appointment of a Learning and Support Teacher to every school with varying numbers of hours depending on the student enrolments and a supplement according to the learning needs index of the school. There is no change for students with a confirmed disability who have moderate,

15 Board of Studies' ACE website <http://ace.bos.nsw.edu.au/ace-10003>

16 NSW Department of Education and Communities Every Student, Every School Learning and Support March 2012 <https://www.det.nsw.edu.au/media/downloads/about-us/how-we-operate/national-partnerships-program/every-student-every-school/learning-and-support.pdf>

17 Trial for a model for collecting nationally consistent data on school students with disability – Final Report October 2011 p.vii

18 National Partnership Agreement for More Support for Students with a Disability http://www.federalfinancialrelations.gov.au/content/npa/education/more_support_for_student_with_disabilites/national-agreement.pdf

complex or highly specialised targeted support in mainstream classes who will continue to be supported by the existing arrangement.

This redistribution is particularly relevant to this investigation as it is intended to increase the level of skill in supporting students with a disability in individual schools. Students with a formally diagnosed disability are currently known and have their learning needs identified. It is students that fall outside this cohort, including those with reading and writing difficulties, who are at risk of not being identified by schools as potential candidates for HSC disability provisions applications.

The department's proposed training for 'Every Student, Every School' aims to change the teaching and school culture to one with a more individual focus. The department knows from research¹⁹ that the areas that are not working well are:

- the understanding of what a reasonable adjustment looks like
- a lack of effective consultation with the students and their families about the adjustments.

Introduction of functional assessment tool

The department is developing a functional assessment tool to help teachers identify an individual student's needs. It will be rolled out during 2013. It will be completed by both the teacher and parents and should act as a 'signpost' for where a student may need reasonable adjustment. It will give teachers and schools a guide for planning to meet the learning needs of students and what types of support might be appropriate. Originally it was designed for students with a diagnosed disability but is being developed so it can be used for all students who need adjusted learning and support.

3.3.2. Local Schools, Local Decisions

The introduction of 'Local Schools, Local Decisions', which is being rolled out between 2012 to 2014 to all schools in NSW, gives principals more responsibility. The department expects principals to have a good understanding of their legal responsibilities and use their new funding discretion effectively. The proposed changes aim to drive significant change in school culture and give schools more ownership of decisions to better reflect the individual nature of the school and its community.

At this time it is not clear what impact the 'Local Schools, Local Decisions' and the 'Every Student, Every School' initiatives will have on culture in schools.

¹⁹ Shut Out! The experience of people with disabilities and their families in Australia and Report on the review of the Disability Standards for Education 2005

Chapter 4. Major issues

Based on our analysis of information provided by the Board and department, our review of a sample of disability provisions applications and interviews with a range of staff in different schools, we identified a number of major issues which are impacting on the adequacy and effectiveness of current processes for managing HSC disability provisions. These issues are discussed in detail below.

4.1. Disability data

The lack of consistent data across the sectors about students with a disability and/or learning needs means it is very difficult to identify problems and appropriate strategies. Data is collected on the number of students in schools with a diagnosed disability, mainly because of funding arrangements. However, data on students receiving funding does not capture the full range of disabilities and learning needs of school students.

A student with reading or spelling difficulties will not receive separate funding but the school may provide them with additional support. This means it is not possible to identify with any certainty how many students with disabilities or other students with learning needs there are who do not receive funding, where they are and what level of adjustment is being made for them.

Part of a Council of Australian Government initiative in education was to find a way of capturing nationally consistent data about school students with a disability.²⁰ The trial of a data collection tool was completed by 149 schools from the different sectors across Australia during the period from April to August 2011. The report on the trial stated:

Currently, there is no national understanding of school students with disability or their educational needs and provision of support. Jurisdictions do not collect and report information about school students with disability in the same way. State and system level data generally capture the number of school students with disability that receive targeted funding according to the funding model in that state or system.²¹

It is difficult to measure how well schools are catering to the learning needs of students if the number of those students are not known.

4.2. Resources

Public schools consistently told us that a lack of resources is an issue and that making applications took up valuable staff time that could be used to support students' needs in other ways. This was particularly the case where schools did not, or were unable, to provide administrative support to learning support staff who were coordinating the application process.

Case study 4

A public school deputy principal told us that students at their school were in the bottom percentiles and struggling. It would not occur to those students to use a system that had not supported them previously. After actively seeking out students for provisions one year the school found it was too disruptive and a drain on their resources. A number of students refused to take up provisions on the day of the exam even though they were approved by the Board. A decision was made that in future students would have to self refer for provisions.

²⁰ A Trial of a Model to Collect Consistently Data on School Students with a disability, PriceWaterhouseCoopers, October 2011 <http://foi.deewr.gov.au/documents/trial-model-collecting-nationally-consistent-data-school-students-disability-final-report>

²¹ A Trial of a Model to Collect Consistently Data on School Students with a disability, PriceWaterhouseCoopers, October 2011 <http://foi.deewr.gov.au/documents/trial-model-collecting-nationally-consistent-data-school-students-disability-final-report>

We collated information on the staffing ratios for teaching and non-teaching staff for the selected schools from the MySchool website.²² This indicates that some schools have much higher levels of non-teaching staff, at least some of whom we assume would be available for administrative tasks.

Although all schools will have students with disabilities and other support needs, students from disadvantaged backgrounds are likely to need more support and help. We are told that public schools have more students with more complex needs. Higher levels of resources are necessary to meet those needs.

A number of public schools receive extra funding due to their low socio-economic status and have more resources than other public schools. If some schools are receiving extra funding and have more resources, they are more likely to have the time and staff available to administer the disability application process.

Most public schools we visited did not have a documented policy and procedure setting out the disability application process. Most schools talked about the importance of having an experienced person to deal with applications. If there are no documented procedures this makes it particularly difficult for teachers new to the role. Although there is information available from the Board, each school has a different way of administering it. If this is not documented, schools risk the expertise being lost when an experienced teacher leaves.

The department said whether or not schools had a documented policy did not affect the application process due to the level of communication and guidance from the Board. In our view the existence of an internal policy is an indication that an individual school has an articulated commitment to the disability provisions process and provides clarity to teaching staff to guide and support them on applying it in the individual school's environment.

4.3. Communication by the Board of Studies

4.3.1. Need for clearer information

Schools told us about families having to get a medical diagnosis for long term conditions, that a very expensive handwriting diagnosis is necessary to apply for a writer for illegible handwriting and that the Board does not accept medical information from school counsellors.

The Board told us that the schools are mistaken and that long term conditions do not require a recent medical confirmation, illegible handwriting can be diagnosed by an occupational therapist or any other suitable health professional and school counsellors are qualified to provide appropriate medical information.

This confusion about the requirements highlights a need for clearer information, including examples of what provisions might look like in practice.

The Board has demonstrated it is willing to review its practices to make improvements where it can. The most recent review²³ by Damien and Ellis in 2011 made a number of practical recommendations that the Board agreed to implement that should be beneficial in improving processes. However, five out of the 16 recommendations in the review involve no changes as the requested alterations are actually already in place. In our view the fact even the authors of the report were unaware of the Board's requirements is further evidence that current information is not sufficiently clear.

Many schools we visited told us that some of the Board's decisions and processes were puzzling and inconsistent. Schools want more guidance so they do not waste valuable resources.

²² We have not provided this data with this report to protect the identity of the selected schools.

²³ Review of the NSW Higher School Certificate Disability Provisions Program by Damien Ellis and Beverley Johnson September 2011 http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/disabilities-provisions-review.pdf

Such misunderstandings strongly suggest that the Board would benefit from holding focus groups with school staff to clear up misunderstandings which currently exist and gain a better understanding of how communication can be improved. Given the importance of good communication, this could be done annually to make sure that the Board hears directly from schools about any difficulties and areas for possible improvements.

4.3.2. Information about benchmarks

The Board does not explain the precise levels of reading and writing benchmarks used in the approval of provisions. This information is apparently withheld to prevent any abuse of the system. However, this also creates work for schools that make unnecessary applications. As the Board requires schools to provide copies of reading and spelling tests as evidence, we would argue that there is a cost benefit for the Board and schools in knowing what the levels are. We would also expect teachers' professionalism to mean they will adhere to the rules and conduct testing without influencing results.

Making benchmark levels public might encourage a better understanding of what is involved and provide more accountability for decisions. It will also avoid any advantage gained by some schools which make numerous applications and therefore may already have a good idea of what the levels are.

4.3.3. Disability provisions

Many schools complained to us that the title 'disability' acts as a barrier for students to take up the provisions as they do not want to be labelled. The Board takes the view that the provisions are granted only on the basis that a student has a disability and the use of the word 'disability' is necessary to underpin that requirement.

We appreciate both views but given the Board is responsible for ensuring that the message about the nature of the provisions is accurate and clearly understood, we consider its decision to use the word 'disability' to be reasonable in the circumstances.

4.4. Health professional reports

The Board told our office in September 2012 that:

The Disability Discrimination Act defines "disability" to include disability that is imputed to a person. The Disability Discrimination Act also states that "to avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability".

In a small number of cases, in the absence of a diagnosed disability, the Board considers descriptions and exemplars of symptoms as evidence of the existence of a disability.

The Board subsequently told us in October 2012 that as a consequence of renaming the program from special provisions to disability provisions the Board tightened up the requirement to have a diagnosis of a disability. Prior to this the Board gave more consideration to a school's comments. Now, in order to firmly connect the purpose of the disability applications to the Disability Discrimination Act, the Board no longer supports the use of discretion.

The school staff we interviewed did not indicate they were aware the Board had any discretion to impute a disability. Schools consistently told us that an application must be supported by a report from a medical professional.

The Board's general requirement to provide evidence from a health professional of a disability may provide robustness to the application process but it also acts as a barrier for disadvantaged students. Many schools told us that the expense and difficulty in accessing health professionals meant that some students were not able to provide supporting evidence. As well as being a barrier for students, it can also influence a school's decision-making process as to whether or not it is worth making an application.

Case study 5

A principal at a regional school with a high Aboriginal student population told us that there was only one bus a day in the area and many parents/carers with little disposable income, no transport of their own and a shortage of medical professionals, would not find it easy to get health reports. This is not the case for city students from more affluent backgrounds.

A diagnosis is only required to establish the existence of a disability. Provisions are then determined by functional evidence about how the disability impacts on a student in an educational environment. For example, a medical professional may confirm a hand injury but it is how this affects a student's ability to write in an exam which is the crucial factor for the Board, for instance a minor hand injury may not affect a student's capacity to hold a pen and write.

Schools expressed confusion and frustration with the process particularly where they felt a considerable amount of medical evidence was provided to support a case but an application was still declined. The Board confirmed that schools did not always understand that more of the same medical information might not change a decision. The Board might not be disputing the diagnosis, but the lack of evidence of how it impacted a student in an exam situation. In such circumstances the application could not be approved.

On viewing a number of medical reports to support applications we also found that unnecessarily extensive information was sometimes provided by medical practitioners about a condition, such as anxiety. It is concerning that in some instances personal information, particularly psychological reports, are being unnecessarily provided due to a lack of clarity about what is needed. Although the Board has a template form for medical practitioners it appears that the purpose of the report in the context of what is needed for an application is not always well understood.

In its submissions during the investigation the Board said there was a misconception in our provisional document that there is a requirement for students to provide a 'medical' report. The Board said confirmation of a diagnosis is not limited to medical professionals but, depending on the student's disability, could be provided by a school counsellor, psychologist or other appropriate health professional.

Although this may be the case, in our view a student's ability to provide medical and/or health reports is likely to impact on the school's ability to submit supporting evidence to the Board of a student's disability. An underlying issue therefore remains that there is an increased likelihood that students from more affluent backgrounds will have better access to health and/or medical professionals than students from disadvantaged backgrounds.

There are no publicly available guidelines to inform schools or families about the Board's use of discretion in making decisions about applications for HSC disability provisions. Guidelines would help to clarify the internal decision making process and provide transparency and accountability about when discretion should or should not be used.

The department's introduction of a functional assessment tool and the aim of strengthening personalised learning and support for public school students with a disability provides an opportunity for the department and Board to review what evidence is required to support an application for HSC disability provisions.

4.5. Equity

The Board's 2011 Annual Report advises that the Board's policies and programs are underpinned by the key principles of equity and inclusiveness and designed and delivered with fairness and consistency. The Statement of Equity Principles²⁴ on the Board's website acts as a guide to writers of syllabuses, support materials and assessment guidelines.

24 Statement of Equity Principles http://www.boardofstudies.nsw.edu.au/jobs/pdf_doc/state_equity_princ.pdf

4.5.1. Aboriginal and Torres Strait Islander students

The Board told us that the data on Aboriginal and Torres Strait Islander students making applications is probably not accurate as it is not a mandatory field in the Board's online application form and schools do not always enter accurate information. It is thought that there is an under-reporting in this area, possibly in the order of 40%.

Given the focus on Aboriginal education and focus on improving outcomes, this information would seem to be essential for monitoring whether Aboriginal students are getting appropriate support and identifying where initiatives are required to address learning needs.

4.5.2. Students from multicultural backgrounds

We heard differing opinions about the likelihood of a student from a non English speaking background making an application and taking up any provisions granted. Some schools felt the student's background was relevant and others did not. The Board recently acted on a recommendation from the 2011 report to produce brochures in different languages about the disability provisions applications process.

The Board could usefully seek external advice, in conjunction with the different school sectors, about the best way to reach parents and students from multicultural backgrounds and what other promotional material might be helpful.

4.5.3. Disadvantaged students

Many of the sample schools we visited have disadvantaged students with complex and financially challenged lives. These students are far less likely to access provisions for a range of different reasons. These include factors such as not wanting to be stigmatised, low expectations, lack of family support, inability to access medical professionals and not wanting to be different. Often those students are attending schools dealing with significant demands on their resources.

The Board advised us they are grappling with how to improve equity issues within the limitations of their role. The Board advocates that a robust process to deal with applications is essential to preserve the integrity of the HSC. However, it is important that any process does not exclude disadvantaged public school students. This is a difficult balance to achieve.

In our view this is a multi-faceted problem that cannot be solved by the Board alone. The Board is unable to unilaterally increase public school applications. It sits outside the school system, with responsibility for ensuring the integrity of the curriculum and exam process. The role of the Board is to ensure that applications are appropriate and do not give any individual student an unfair advantage.

The number of applications and where they come from is not within the control of the Board. However, the current time consuming system and the perceived reliance on medical reports advantages more affluent schools with more resources. Where schools can demonstrate significant disadvantage we consider it appropriate and reasonable for the Board to make full use of its discretion.

4.6. School culture

It is difficult to define a school's culture, and what this means for students with a disability. The teaching culture encompasses such attributes as a personal philosophy, an approach, a world view, good communication and professionalism. We know from many other reports on education and disability, and from speaking with schools, that there has been a shift towards inclusion of students with a disability in mainstream schools. Some schools are further along the inclusion model continuum than others.

The schools that 'tune in' to the individual needs and welfare of students and believe that inclusion works appear to be more successful in creating a positive culture to support this value within the school. Those schools also appear to have more positive communication with parents/carers and include them in the education experience. From the evidence we have seen, when the following

three elements are present in a school it is likely to result in higher numbers of disability provisions applications:

- a school culture which embraces the principles of inclusion and staff that are skilled in identifying and understanding individual learning needs
- parents with high expectations for their children
- a well resourced school.

Some schools focus on academic outcomes and not on the individual learning needs of the student. When this occurs, schools may not see the value in making disability applications for students who they do not believe will achieve academically. This strongly suggests such schools do not have a good understanding of their legal obligations to make reasonable accommodation under the Disability Discrimination Act.

Some public school staff from the schools we visited thought their approach was fair and they only put in applications that were valid. They thought independent schools were taking unfair advantage of the system to improve students' results. We were often told in our interviews with public school teachers that public school students wanted to do the exam without help and considered the provisions as a form of cheating. Irrespective of those views, this should not stop public schools from complying with their legal responsibility to meet the learning needs of students with a disability.

The Review of Disability Standards for Education 2005²⁵ found there was a limited understanding of the standards and a lack of practical and targeted information.

It is understandable that teachers who have received no formal training in disability issues and are not provided with clear and practical information on how to identify and cater for specific learning needs, find it difficult to change their teaching practice. Only two out of the nine public schools provided us with school based information on their application process.

The department advised us that:

*Consistent and appropriate strategies are implemented by the department to ensure reasonable accommodations and learning adjustments, including application for disability provisions for the Higher School Certificate, are made for students with special needs.*²⁶

However, the Board's data shows that a number of public schools make low numbers of applications. In 2011 386 out of 778 public schools had less than 4% of their total HSC exam students with approved disability provisions. This compares with 107 out of 777 non-government schools.

The proposed training for 'Every Student, Every School' has the potential to help address these issues. Given the crucial role of principals we suggest that as part of that initiative all principals should attend compulsory training about schools' legal obligation under the Disability Discrimination Act to make reasonable accommodations. This could also include sharing best practice by other principals identified as demonstrating leadership in this area.

Complaints

The department has no publicly available data on complaints involving students with a disability in schools. This issue was raised in the Department of Education, Employment and Workplace Relations' 'Report on the Review of Disability Standards for Education 2005'²⁷:

....a more effective complaints process could have educative value in improving understanding of the principles of the Disability Discrimination Act and promoting systemic change. A number of submissions argued that there is no publicly available data on complaints in state education departments and no reporting requirements under the Standards. It was recommended that there

25 Report on the Review of Disability Standards for Education 2005 June 2012 p5 http://www.deewr.gov.au/Schooling/Programs/Documents/Report_on_the_Review_of_DSE_2005.pdf

26 Department of Education and Communities response to NSW Ombudsman preliminary inquiries 7 November 2011

27 Report on the Review of Disability Standards for Education 2005 http://www.deewr.gov.au/Schooling/Programs/Documents/Report_on_the_Review_of_DSE_2005.pdf

should be accountability, transparency and access to useful data such as numbers of students with disability and numbers of complaints by type and sector.

Issues with complaint handling were also identified in the Victorian Human Rights and Equal Opportunity Commission report 'Held Back – The Experience of Students with a Disability in Victorian Schools'.²⁸

This office receives complaints from parents/carers and advocacy groups about the adequacy of the actions taken by schools to meet the needs of students with a disability. We are often contacted when the relationship has broken down between the school and the parents/carers. Some parents/carers tell us that they were not aware of the department's complaint handling process.

The appropriate escalation of a complaint is beneficial for both the complainant and the school. By being involved earlier the department has an opportunity to offer support and give advice to the school, as well as hearing the concerns of a parent. This has the potential to act as a circuit breaker for ongoing disputes and foster better relationships.

In our experience the department's complaint handling process is generally effective and resolves or clarifies the vast majority of complaints in a fair and appropriate way. However, we are concerned that individual schools are not informing parents/carers about how to escalate their complaint through the department's complaint handling process and this information is not readily available on individual school websites or given routinely to school communities. In our view where disputes remain solely within the school environment without outside intervention it can result in conflict that becomes entrenched and problematic for both school staff and parents/carers.

The department has indicated its willingness to look at ways of improving communication to school communities about the complaint handling process. The department is exploring the possibility of including standard information about making a complaint on school websites and enrolment forms. We see this as a positive first step and will continue to monitor the progress of those suggestions.

The department is aware that we remain concerned about its overall management of the complaint handling process and in particular its lack of centralised collection and analysis of complaint information. We will be continuing our work in that area.

²⁸ Held Back: The experiences of students with disabilities in Victorian Schools 2012 http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1754:held-back-the-experiences-of-students-with-disabilities-in-victorian-schools-sep-2012&Itemid=690#!/ts=1355729551143!

Chapter 5. Conclusion

During this investigation both the Board and department have demonstrated a commendable willingness to make changes to the way in which applications are handled.

Some changes have already been made. For example, liaison between the Board and the department has increased including discussions about the use of personalised learning and support plans. We are aware that work on a number of our recommendations is already underway.

If the current system for disability provisions for the HSC does not change, the under-representation of public school students in the applications made is likely to continue. We will be closely monitoring implementation of the recommendations.

Recommendations

In our March 2013 report under Section 26 of the *Ombudsman Act 1974* we recommend that:

The Board of Studies

The Board of Studies:

1. continues to liaise with the Department of Education and Communities about the possibility of using personalised learning and support plans as evidence of a student's disability to support an application for HSC disability provisions and reports the outcome of those discussions to our office by 1 May 2013;
2. drafts and makes public guidelines on the Board of Studies' use of discretion in making decisions about disability provisions applications for the HSC;
3. makes public all benchmarks, including the reading and spelling standardised tests which are used to determine a student's eligibility for disability provisions;
4. introduces an Aboriginal or Torres Strait Islander compulsory field as part of the online application process with a 'Yes, No or Not Identified' response;
5. runs focus groups with school staff, parents and students to gain a better understanding of how it might improve communication in general and reviews its communication plan on an annual basis;
6. considers providing case studies to schools about unsuccessful applications, with explanations about why they were declined;
7. produces a fact sheet for medical providers explaining the purpose of the medical report in the context of the HSC disability applications process. This should provide examples of what is relevant for an application with the aim of reducing practitioners providing unnecessary health information.

Department of Education and Communities (Public Schools)

The Department of Education and Communities takes steps to ensure that:

8. it continues to discuss with the Board of Studies the possibility of using personalised learning and support plans as evidence of a student's disability for the purposes of an application for disability provisions for the HSC and updates our office on the outcome of those discussions by 1 May 2013;

9. **all public school principals are required to complete compulsory training on the obligations to make reasonable adjustments for students with a disability under the *Disability Discrimination Act 1992*;**
10. **School Education Directors are required to undertake an annual review of statistics from the Board of Studies to identify schools with no applications for disability provisions for the HSC;**
11. **School Education Directors are required to review schools identified in this way to ensure that they are meeting their legal obligations to make reasonable adjustments for students with a disability or other needs;**
12. **specific information on the HSC disability provisions applications process is included in appropriate policies and procedures;**
13. **School Education Directors are required to identify schools in their regions with good practice in making disability provisions applications for the HSC and circulate information about what they do to other schools;**
14. **School Education Directors take responsibility for monitoring schools on their compliance with their legal obligations under the Disability Discrimination Act and a state office director in the secondary education area is responsible for liaising with the Board of Studies;**
15. **schools are required to include information on their websites about the Department of Education and Communities' school complaint handling process;**
16. **the Department of Education and Communities explores the possibility of including information about their complaint handling process on the school enrolment form;**
17. **the Department of Education and Communities explores with the Board of Studies the possibility of joint visits to identified schools to provide guidance and information to staff and parents/carers on disability provisions applications for the HSC and disability issues in general.**

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NSW Department of Education and Communities - Disability Action Plan 2011 – 2013 https://www.det.nsw.edu.au/media/downloads/strat_direction/strat_plans/disaplan.pdf

The link to the Board of Studies reports on the Disability Provisions from 2008 to 2012 <http://www.boardofstudies.nsw.edu.au/disability-provisions/reports.html>

Shut Out! The experience of people with disabilities and their families in Australia (2009) http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nds_report.pdf

A thick teal wavy line runs horizontally across the top of the page. On the right side, there is a large, light blue circular graphic composed of several overlapping, curved segments, resembling a stylized flower or a modern logo element.

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: 02 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au