

## **Committee on the Rights of Persons with Disabilities – Submission on the Draft General Comment on the Right to Inclusive Education - January 2016**

1. Children with Disability Australia (CDA) is the national representative organisation for children and young people with disability, aged 0 to 25 years. CDA has a national membership of 5300 with the majority being families.
2. The Disability Discrimination Legal Service Inc (DDLS) is a community legal centre that specialises in disability discrimination legal matters. DDLS provides free legal advice in several areas including information, referral, advice, casework assistance, community legal education, policy & law reform.
3. CDA and DDLS welcome the opportunity to provide feedback about the draft General Comment on the Right to Inclusive Education and would commend the work of the Committee. The majority of the document articulates comprehensively the breadth of considerations regarding States Parties responsibilities to transition to and maintain an inclusive education system. Given the complexity and contestation that surrounds the concept of ‘inclusion,’ this is a significant achievement.

### **GENERAL FEEDBACK**

4. Throughout the draft General Comment, people with disability are marginalised when collective descriptors are used in a context which has an underlying assumption that all people with disability are the same. Language such as “they” or “them” are examples of this. Use of this language often does not reflect the diverse individual experience of disability. CDA and DDLS therefore recommend using “people” or “students with disability” throughout the General Comment.

### **SPECIFIC COMMENTS ABOUT THE DRAFT GENERAL COMMENT**

#### **Paragraph 3**

5. Under “the social case” for inclusive education, CDA and DDLS recommend changing “all learners...are encouraged to learn tolerance” to “are encouraged to value diversity.” “Tolerance” implies putting up with or enduring the presence of someone, rather than valuing the contributions that students with disability make.

6. Another aspect that can be included under “the economic case” for inclusive education, is the increased economic participation that will arise from the provision of a high quality, inclusive education for students with disability. A quality education has significant impacts on future skill acquisition and employment prospects.<sup>1</sup> An inclusive education system should therefore also be understood as a means of supporting students with disability to participate and contribute to the economy and community.

#### **Paragraph 5**

7. CDA and DDLS view the discussion of barriers in this paragraph as a highly important element of the draft General Comment. These are critical issues for States Parties to measure and address.
8. Under the second bullet point, one barrier is defined as “widespread lack of knowledge about the nature of their impairments.” This description uses deficit language. A possible alternative could be “a lack of knowledge about diverse learning and support needs.” Further, in the first sentence, “persons with disabilities” should be replaced by “students with disability” to highlight that discrimination relevant to the General Comment occurs in education settings.

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<sup>1</sup> Organisation for Economic Cooperation and Development 2014, *Education at a glance 2014: OECD indicators*, OECD Publishing, p. 13.

## NORMATIVE CONTENT OF ARTICLE 24

### Paragraph 11

9. The definition of “segregation” in this paragraph is narrow and does not cover the breadth of exclusion and segregation experienced by students with disability. It is believed that the definition should be broader and include definitions of both macro exclusion and micro exclusion.

10. In an education context, macro-exclusion refers to a child being segregated into a special school or a special class or unit within a mainstream school.<sup>2</sup> The presence of students within a mainstream education setting, but without being included, is referred to as micro-exclusion.<sup>3</sup> This can include a refusal of the school to make accommodations to ensure the student can participate, exclusion from classwork and extracurricular activities, partial enrolment or attitudes that devalue disability among school staff.<sup>4</sup> In each of these cases, students with disability are not provided with equal access to participate in education.

11. Examples of micro-exclusion are frequently not understood or identified as such and can be repositioned as inclusion. For example, denying attendance at excursions or working alone with a support worker are examples of exclusion which are often overlooked under the mistaken presumption that if a student is enrolled in a mainstream class then they are receiving an inclusive education. Inclusion is a frequently misunderstood term and it is therefore highly important that it is clearly defined.

### Paragraph 21

12. Within this paragraph there are some inconsistencies in the language used to describe the obligations of States Parties regarding accessibility. For example, the “Committee *encourages* State parties to commit to the introduction of Universal Design” is less strong than “State parties *must* commit to a prohibition on the building of any future education institutions that are inaccessible.” CDA and DDLS recommend ensuring that the wording of directives is consistent to ensure the requirements of States Parties are clear.

### Paragraph 25

13. The sentence that begins “Curricula must be adapted” is unclear.

### Paragraph 27

14. There is a need to clearly define what it meant by “safe physical reach.” For example, in the Australian context, children with disability can be enrolled in special schools, which can require up to four hours per day travel time on school buses, not due to distance, but limited spending on transport arrangements.

15. During this time students are often denied opportunities to use the toilet, eat or drink or engage in play, recreation, extracurricular activities and family time. This circumstance should be incorporated in the General Comment.

### Paragraph 28

16. Case law in Australia reveals attempts by States Parties to limit the definition of “accommodation” and attempt to withhold accommodations such as behaviour assessments by claiming they are not a “modification” or “adjustment.” It is recommended that the terms “measure” and “action” be included in this paragraph to define reasonable accommodation.

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<sup>2</sup> Children with Disability Australia 2013, *Inclusion in Education: Towards Equality for Students with Disability*, Melbourne, p. 14.

<sup>3</sup> Ibid, p. 14.

<sup>4</sup> Ibid, p. 15.

### **Paragraph 29**

17. Implying that the determination of accommodations should be made on an equal footing between education providers, students and parents is unrealistic. This is due to the conflict of interest the provider has while discrimination and cost saving priorities continue to be a common approach to the education of students with disabilities by States Parties. It is recommended that the last sentence end after the words “family members,” and then begin “Accommodations must meet the access needs of the student and must be informed in large part by the student, their family and if relevant the student’s medical practitioner.”

18. The absolute and explicit right to be provided with a functional communication method, native sign language and augmentative and alternative communication throughout the student’s education should be included in this paragraph or paragraph 32.

### **Paragraph 30**

19. It is vital to stress the critical importance of ensuring that any complaints or accountability mechanisms are timely. In Australia, there is no timely, independent mechanism for students and families to pursue complaints regarding education experiences. Existing complaints mechanisms are prohibitively difficult, time consuming and expensive. This can lead to students spending extended periods out of school or without accommodation.

### **Paragraph 32**

20. It is important to clearly define the role of the ‘learning support assistant’ to ensure it is consistent with the principles of inclusive education.

21. The existence and function of the Individual Education Plan cannot be underestimated. It is recommended that the second sentence begin with “States parties must introduce systems...” and end with the addition of the phrase “and include measurable outcomes to determine effectiveness.”

### **Paragraph 35**

22. The phrase “inclusion of disability” is unclear and could be interpreted as meaning that inclusive education can be an add-on component of teacher education, rather than a fundamental concept that should guide teacher education as a whole. It could be replaced by “studies in inclusive education.”

23. It is believed that States Parties should require initial teacher education courses to ensure beginning teachers enter the classroom with best-practice knowledge and skills in the inclusion of students with disability.

24. Further, States Parties should also work to ensure that all current teachers, principals and support staff are supported to develop inclusive education knowledge and skills with an emphasis on universal design for learning, differentiated teaching and cooperative learning.

### **Additional comment**

25. CDA and DDLS recommend including a paragraph under “normative content of the article” that specifically discusses post school transition and the transition period for post school life which typically commences mid-way through a student’s secondary schooling.

26. Post school transition is relevant to a number of areas contained within Article 24, particularly 1.a, 1.b and 1.c and is critical to ensuring that students with disability are supported to contribute to the community post school. It is therefore an important component of an inclusive education.

27. CDA has a report entitled *Post school transition: The experiences of students with disability*,<sup>5</sup> providing a comprehensive discussion of the current Australian context.

#### OBLIGATIONS OF STATES PARTIES

##### **Paragraph 39**

28. There should be a requirement for States Parties to develop timelines for the progressive realisation of an inclusive education system.

##### **Paragraph 40**

29. It is important to consider if this should include a reference to how often students attend school. In Australia some students are denied the opportunity to attend school full time. In some cases students are only able to attend school on a part time basis (for example two hours per day).

##### **Paragraph 49**

30. Clarification is required regarding as to what is meant by providing “an opportunity to develop the expression of the will of students with disability.”

##### **Paragraph 50**

31. In this paragraph, CDA and DDLS recommend that restraint and seclusion of students with disability is explicitly mentioned as a form of violence and abuse. Restraint and seclusion is experienced by children and young people with disability in education settings, often as a “strategy” to “manage behaviour.” It is frequently justified as acceptable or necessary to ensure the safety of the student concerned or others. It is critical that States Parties commit to eliminating the use of restraint and seclusion of students with disability.

##### **Paragraph 51**

32. Children with disability in Australia are believed to be overrepresented in out of home care placements that result from child protection interventions, particularly residential care, despite there being no official national data. The Committee may also wish to include this cohort in paragraph 51. In Australia, as this cohort is believed to be at high risk of not accessing education.

##### **Paragraph 52**

33. For children and young people with high communication support needs, communication often occurs primarily through behaviour, however this is often not recognised. It is important that communication through behaviour is acknowledged as part of the right to freedom of expression.

##### **Paragraph 53**

34. In this paragraph it is also relevant to include reference to the issue of school transport for students with disability (discussed in paragraph 27). Students being denied access to food and drink, toilets, or being required to wear nappies on long bus trips raises significant physical and mental health concerns, in addition to the right to be treated with dignity and respect. Further, for children with specific health and physical care needs, the long periods spent travelling to and from school inhibits the provision of necessary support and at times can exacerbate health concerns.

##### **Paragraph 55**

35. Post school transition is also relevant to article 27 and should be explicitly mentioned in this paragraph.

#### IMPLEMENTATION AT THE NATIONAL LEVEL

##### **Paragraph 63**

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<sup>5</sup> Available at <http://www.cda.org.au/post-school-transition>

**36.** As discussed under paragraph 30, CDA and DDLS recommend including that all complaints mechanisms be timely. It is recommended that subsection (a) include a reference to the Convention Against Torture to address issues of teacher violence against students with disabilities, and that a new subsection (l) be added to include the elimination of restraint and seclusion in schools.

**37.** It is unclear if there is an expectation for States Parties to provide free preschool education.

#### **Paragraph 72**

**38.** See paragraph 35 for discussion of teacher education.

#### **Paragraph 73**

**39.** Applicable to the entire paragraph is the requirement for States Parties to resource schools adequately in order that they are able to undertake any of the suggested approaches effectively. When schools are not adequately resourced, availability of funds drives all processes and this will stand in the way of attaining the goal of inclusive education.

**40.** CDA and DDLS have reservations about the “whole education institution approach.” There is a significant risk that the quality of teaching and commitment to the values of inclusive education would vary significantly between the educators and the institution.

**41.** There is a critical need to ensure independent monitoring and verification of the process by objective and appropriately qualified professionals. Further, this approach cannot be a substitute for quality teacher education, as discussed under paragraph 35.

**42.** CDA and DDLS have significant concerns with the “special schools as resource centres” approach, particularly given that special schools are by definition not inclusive. While special schools may offer some expertise that could be shared with teachers and other education professionals in certain circumstances, the adapted role should not include direct work with students. This limited role should be clearly defined in the General Comment.

**43.** It also should not be presumed that special schools have expertise. The Australian direct experience is that the expertise and practices within special schools are highly variable and include more often than not low academic expectations and high levels of restraint and seclusion.

**44.** A resource teacher working in schools has potential to have a useful role in providing additional support to teachers and other educational staff in ensuring inclusive practice. However, it is important that this role is carefully considered and does not lead to exclusion, such as working “individually or in small groups with students” with disability - a form of micro exclusion. Rather, this role should be oriented to supporting and providing expertise to teachers, families and students.

#### **Paragraph 80**

**45.** It may be useful to qualify the role of “families, volunteers & community members.” Classroom support should not be seen as a substitute for adequate resourcing & expertise from the education system.

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