

Submission
to the
2016 Review of the NSW Board of Studies,
Teaching and Educational Standards
(‘BOSTES’)

[via: bostes.review@det.nsw.edu.au]

Prepared by: Carol Barnes carol.barnes@unsw.edu.au

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Summary:

This experiential submission focusses on the BOSTES policy and program with respect to **disability adjustments for NSW HSC final exams**. In this context, it discusses the concerns of students with disability and their parents and teachers regarding the BOSTES policy, application procedure and decision criteria, and it outlines some of the **obstacles** which students, parents, teachers and professionals encounter when attempting to obtain disability adjustments for students with disability for the HSC final exams. Attention is focussed on the degree to which the BOSTES website pronouncements are compliant with disability discrimination **legislation**. The submission highlights the particular problems experienced by **gifted** students with disability in this context, and discusses why the BOSTES disability adjustments system may be **disadvantaging NSW** HSC graduates vis-à-vis their counterparts from the other Australian justifications. It includes **recommendations** for possible solutions to the problems described in the submission. Most importantly, recommendations are made with respect to **extra time** and use of a **laptop**, and the **research** behind the provision of disability adjustments for limited-time tests is canvassed. **Examples** in support of the assertions in the submission are listed in the Appendix.

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1. Background

This submission is made in response to the call for submissions by the NSW Minister for Education in the context of the 2016 Review of the NSW Board of Studies, Teaching and Educational Standards ('**BOSTES**):

<https://www.det.nsw.edu.au/media/downloads/about-us/news-at-det/media-releases1/review-bostes.pdf> and

<http://www.dec.nsw.gov.au/about-us/news-at-det/announcements/nsw-board-of-studies-teaching-and-educational-standards-bostes>

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

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

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

GLD Australia has approximately 250 members across Australia. It has no political affiliations, is not an incorporated association, and thus has no income, membership fees, property, officers, employees or premises. Run entirely by non-paid volunteers, it does not offer any tutoring or exam preparation courses or other commercial services.

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

In the course of my volunteer work for GLD Australia and for a variety of other gifted and learning disabilities associations and groups, I have over the last decade spoken to, and communicated via email with, many hundreds of parents whose gifted children with disability are not having their needs met at school, and **in particular NSW parents who have encountered problems when applying to BOSTES for disability adjustments for their children's Higher School Certificate ('HSC') final exams.**

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

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

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

And for the avoidance of doubt, I record here that I do not myself have a child in a NSW school who will one day write the HSC final exams. Accordingly, this submission does not in any way stem from self-interest.

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

Accordingly, I personally have not been affected by the NSW HSC exam system or by any decision of BOSTES. I make this submission on behalf of those students, parents and teachers who have.

2. Scope of this submission

I refer to the Issues Paper published by the Review Panel on 31 March 2016: <http://bostesreview.nsw.edu.au/wp-content/uploads/2016/03/BOSTES-Review-issues-paper-310316.pdf> and I note that this submission focusses only on BOSTES' role with respect to developing and delivering the HSC examinations. (Issues Paper, p. 2)

Within that context, the submission addresses only the third of the 'four high-level questions', viz.:

"3. Are processes and practices as effective and efficient as possible?" (Issues Paper, p. 4)

I note in this connection that "*comments are sought on whether ... there are opportunities to improve the ... assessment processes* (Issues Paper, p. 5).

This submission responds to that issue with reference solely to the BOSTES policy on disability adjustments for HSC final exams, viz.:

<http://www.boardofstudies.nsw.edu.au/disability-provisions/> and

<http://ace.bostes.nsw.edu.au/disability-provisions> ,

and the capricious, draconian, inconsistent and shambolic way in which that policy is currently being implemented in the case of some Year 12 students, particularly gifted students.

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

Experience belies this impression.

3. Context of this submission

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

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

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

It is usually at this point also that parents begin to encounter obstacles, initially with respect to having their children's needs met in the classroom,

and later in the context of **applying to BOSTES for disability adjustments for the HSC final exams.**

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

Because the federal and state legislation governing disability discrimination in education is so generally misunderstood and unenforced, I spend countless hours interceding with schools on behalf of parents of children with disability, and ghost-writing emails and letters for parents to send to schools and to the NSW Department of Education and Communities ("**DEC**") and to BOSTES in response to the rejections which parents regularly receive when they apply to schools for their children to receive disability adjustments for classroom activities and for in-school tests and exams, **and in particular when they apply to BOSTES for disability adjustments for the NSW HSC final exams (or when they ask a reluctant or indifferent school to do that on their behalf).**

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

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

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

I have prepared this submission hoping that a solution may be found which will result in parent advocates spending far less time interceding on behalf of parents in this way – a solution whereby all students with medically verified and documented disability can, without filing a HRC complaint, have access to professionally recommended disability adjustments for their HSC final exams when appropriate, and where all parents will have the knowledge which they need to apply for the adjustments, not merely those parents who happen to belong to a support group such as GLD Australia.

4. Concerns of parents of children with disability

4.1 Schools and BOSTES staff often don't know enough (or anything at all...) about disability discrimination legislation and their responsibilities and obligations with respect to helping candidates to apply to BOSTES for disability adjustments for the HSC final exams

Too many schools in all three sectors (public, Catholic and independent) are still initially alleging to parents, and to me as the parent's advocate, that they have never heard of any kind of disability discrimination legislation, viz.:

- federal *Disability Discrimination Act 1992* ('**DDA**') http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/ (or perhaps one of its various State counterparts); and
- federal *Disability Standards for Education 2005* ('**Standards**') <https://www.legislation.gov.au/Details/F2005L00767> which are subordinate legislation made under the *DDA*, and whose provisions are enforceable (*DDA*, s. 32).

When some enterprising parents print something off the internet to draw their school's attention to such legislation, the school's response is often simply, "Oh no, we don't bother with that here. We are too small or big or busy or crowded or rural or inner-city or poor or understaffed or low-SES or high-SES, or academically selective, etc. etc....." .

There is always SOME excuse.

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

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

Similarly, some DEC principals point to the DEC '*Local Schools, Local Decisions*' policy (<http://www.dec.nsw.gov.au/about-the-department/our-reforms/local-schools-local-decisions>) to support their claims that, even as a State school, they are not governed by DEC disability policies which have

been posted on the Department's website – policies which they openly and publically describe, dismiss and disparage as merely 'aspirational'.

Accordingly, there is little uniformity or consistency in the way that DEC disability policies and initiatives are being implemented and obeyed. DEC documents and rhetoric generally do not filter down to individual schools, such that its policies are being implemented in a haphazard, non-standardised and somewhat shambolic fashion, often seemingly capriciously and based on the personal beliefs or whims of individual school personnel.

Similarly, there is enormous variance in individual schools' (in all three sectors) in-house policies and procedures with respect to deciding whether to assist a student to apply to BOSTES for disability adjustments for their HSC final exams.

Many educators in all three sectors neglect to inform parents of their children's rights with respect to disability adjustments for State tests and exams, in particular for the HSC final exams, and accordingly leave it up to individual parents both to instigate applications to BOSTES and then, if successful, to ensure that approved adjustments are eventually properly implemented (despite the fact that clearly not all parents are in a position to do this, or even to know that they need to do it).

In the face of a request to schools to assist in applying for disability adjustments to BOSTES for the HSC final exams, too many teachers and other school personnel reportedly:

- claim that they don't know how to apply to BOSTES for adjustments, how to draft a coherent application, or whether or how a negative decision can be appealed [despite the fact the all that information is freely available here: <http://www.boardofstudies.nsw.edu.au/disability-provisions/guidance.html>], or
- flippantly dispute professionals' documented diagnoses of disability, without reference to legislative definitions of 'disability', or
- don't understand the difference between 'disability' as defined for purposes of public **funding**, and 'disability' as defined for purposes of disability discrimination legislation and disability **adjustments**, or
- declare that they will not apply to BOSTES for disability adjustments because in their view the child does not have a 'real' disability but rather has simply never received correct and effective teaching during primary school, and it's not up to a high school to teach reading or basic math

- claim that they cannot imagine what a disability adjustment would even look like, or
- enthusiastically discourage the application by stating categorially something such as, "Don't bother – you won't get it!", or
- profess to be tired of applying for HSC disability adjustments to BOSTES because they can see no pattern as to whose applications are approved and whose are not. (For example, school counsellors report that they will submit applications to BOSTES for two students with the very same or almost identical disability and levels of impairment, and the same or equally strong medical and other professionals' reports, and yet one child's application will mysteriously be approved and the other's not, without explanation or justification).

Similarly, private psychologists regularly report that they are astonished by the lack of training amongst the BOSTES staff responsible for answering phone enquiries – ie, personnel who clearly have no understanding of the meaning of IQ test reports or disability assessment reports.

Further, many school personnel and BOSTES representatives seem to sceptically regard disability adjustments as conferring some kind of 'advantage' on the child with disability. They generally do not understand:

- that equity does not entail always treating all children exactly the same, but rather treating each child according to what that child needs, or
- that disability adjustments will not and cannot 'level the playing field' in any meaningful way.

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

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

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

'levelled' – it is just tilted slightly so that it's not quite as 'non-level' as it was.

Giving children with disability extra time for HSC final exams does not make them as fast as children without disability who can do their best in the time allowed and thus don't need extra time, and who have been found in research studies to NOT benefit from it (see **Part 10.1** below).

4.2 Schools and BOSTES staff often don't know enough (or anything at all...) about the fact that a child can BOTH be gifted AND have a disability

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

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

Similarly, on the Gagne model of giftedness adopted by the NSW DEC (<http://www.curriculumsupport.education.nsw.gov.au/policies/gats/assets/pdf/polimp.pdf> - page 6), approximately 10% of all students may be assumed to be gifted (high intellectual potential), and accordingly 10% of those diagnosed with learning disabilities or other special needs [except intellectual impairment] may be assumed to be also gifted (albeit as yet perhaps unidentified as gifted). Overseas researchers assert that somewhere between 9 and 16 per cent of gifted students are struggling with a (sometimes undetected) disability.

Giftedness does not preclude disability – and vice-versa.

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

- the Australian Curriculum Assessment and Reporting Authority: <http://www.australiancurriculum.edu.au/StudentDiversity/Who-are-students-with-disability> and <http://www.australiancurriculum.edu.au/StudentDiversity/Gifted-and-talented-students> and <http://www.australiancurriculum.edu.au/StudentDiversity/Who-are-gifted-and-talented-students> , and
- the Education Council, on its Nationally Consistent Collection of Data ('NCCD') website: <http://www.schooldisabilitydatapl.edu.au/data-collection-steps/step-1---is-there-an-adjustment> , and

- the NSW DEC - para 3.1 here: <https://www.det.nsw.edu.au/policies/curriculum/schools/gats/PD20040051.shtml?level=Schools&categories=Schools%7Caccess+%26+equity%7Cgifted+%26+talented> and page 5 here: <http://www.curriculumsupport.education.nsw.gov.au/policies/gats/assets/pdf/polimp.pdf> and here: <http://www.curriculumsupport.education.nsw.gov.au/policies/gats/index.htm> and page 13 here: <http://www.curriculumsupport.education.nsw.gov.au/policies/gats/assets/pdf/polsuppid.pdf> .

Some BOSTES personnel have actually alleged to teachers and to parents that disability adjustments are allowed only for **low-IQ** or otherwise struggling students, but the *DDA* and the *Standards* contain no exemption, express or implied, for students with a high IQ.

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

The fact that a child may have been identified as gifted, or may be enrolled in a select-entry high school, in no way implies that the child could not also have a disability or will not need disability adjustments to succeed at school, **including adjustments for their HSC final exams**.

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

BOSTES' (and sometimes the school's) rejoinder is that the gifted child is already so bright, surely they will still **pass** their exams without the disability adjustments.

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

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

How many students with an IQ in the 99th percentile who have been excelling in school since Year 1 will be satisfied with just 'passing' at the end of Year 12?

As foreshadowed in **Part 4.1** above, parents, teachers and psychologists report that in the same school, two Year 12 students with virtually identical disabilities and equal degrees of impairment will apply to BOSTES at the same time, and the application of the gifted student who is already achieving good grades in Year 12 (but is realistically aiming for higher ones....) will be refused, while the application of the struggling, almost-failing student will be approved.

School personnel then claim to be reluctant to spend any of their very limited time applying to BOSTES for disability adjustments for gifted students who are already doing well and not failing, and assert to parents that they instead wish to concentrate on applications for **struggling** students who are failing or likely to fail (contrary to the opposite assertion on page 15 of the NSW Ombudsman's May 2013 report to Parliament on HSC Disability Provisions:

https://www.ombo.nsw.gov.au/data/assets/pdf_file/0006/9789/HSC-Disability-provisions.pdf).

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

Ironically, once gifted students with disability finally enrol in university, where the disability officers are well trained and the *Standards* much better understood and enforced, these students' difficulties in obtaining adjustments usually disappear. The adjustments are invariably granted as of right once the qualifying medical and psychological evidence is produced.

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

5. When parents apply to schools and to BOSTES for disability adjustments for gifted children with disability

5.1 The rhetoric

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

Examples include [*emphasis mine*]:

- BOSTES is committed to inclusivity and demonstrates this by ... providing *all students with opportunities to ... demonstrate achievement*
<http://www.boardofstudies.nsw.edu.au/syllabuses/syllabus-development/statement-of-values.html>
- Material produced by the Board of Studies NSW will promote the values of excellence from an equity perspective by ... modelling *valid and reliable assessment practices that ... are accessible to every student* <http://www.boardofstudies.nsw.edu.au/jobs/statement-of-equity-principle.html>
- Material produced by the Board of Studies NSW will promote the values of respect and responsibility from an equity perspective by ... *ensuring that assessment practices enable students to achieve success by demonstrating their level of capability*
<http://www.boardofstudies.nsw.edu.au/jobs/statement-of-equity-principle.html>
- Material produced by the Board of Studies NSW will promote the values of respect and responsibility from an equity perspective by ... supporting teachers to design *valid and reliable assessment activities which allow the full range of students to demonstrate achievement in a variety of ways*
<http://www.boardofstudies.nsw.edu.au/jobs/statement-of-equity-principle.html>
- Material produced by the Board of Studies NSW will promote the value of inclusivity from an equity perspective by ... providing a *variety of assessment strategies to cater for the needs of the full range of students, and opportunities for the demonstration of*

achievement in a variety of ways

<http://www.boardofstudies.nsw.edu.au/jobs/statement-of-equity-principle.html> .

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

BOSTES' objectives above all sound wonderful.

Experience tells a different tale.

5.2 The excuses

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

- attempt to unilaterally overrule the professionals' recommendations on a variety of far-fetched and patently specious and irrelevant grounds, or
- otherwise come up with reasons as to why the recommended disability adjustments cannot be implemented.

Examples of such excuses are listed in the **Appendix**.

These excuses reflect the fact not only that too many school and BOSTES personnel generally are unfamiliar with the *DDA* and the *Standards*, but also that their decisions are based capriciously on personal beliefs and porous prejudices.

In my experience, except in the case of a visible, physical disability, the gifted student has very, very little chance of having the recommended adjustments approved unless the parent is particularly feisty, and appeals and appeals and appeals, and finally lodges a complaint with the HRC for failure to comply with the *DDA* and the *Standards*, as described in **Part 6** below.

Indeed, sometimes even students with the most visible and patently debilitating disabilities have trouble obtaining BOSTES' approval for the adjustments:

<http://www.youtube.com/watch?v=bwOk1GQhz9o&feature=youtu.be> at circa 1:15 – 2:00.

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

This happens even when a child has previously received disability adjustments for tests such as NAPLAN or ICAS or former NSW State exams, and even when the application is strongly supported by the child's school - and *a fortiori* in the case of a child who is patently clever and is already achieving well at school.

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

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

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

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

Some BOSTES personnel have reportedly told parents that the written recommendations of certain named professionals are 'never accepted' because "Everyone who goes to that doctor/psychologist etc always gets diagnosed with XYZ disability."

Such assertions are unsubstantiated.

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

Some schools are told by DEC or by BOSTES staff that the decision as to what is 'reasonable' always rests with the school, but they are not told that the school must still be absolutely scrupulous in its determination of what is 'reasonable' and, most importantly, that its decision is always open to challenge.

Neither are they told that:

- prima facie an adjustment IS 'reasonable' "unless making the adjustment would impose an unjustifiable hardship" on the school or on BOSTES (*DDA*, s. 4(1)), and
- "the burden of proving that something would impose unjustifiable hardship lies" with the school or with BOSTES (*DDA*, s. 11(2)). Mere assertion is not sufficient.

5.3 Parents' role in the application procedure

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

Under the current system, schools must apply on behalf of their students using something called 'Schools Online' which requires a login and password so that non-teacher parents are excluded from the process. Students, not parents, sign the application form.

BOSTES justifies this thus:

The application form must be submitted by your child's school as it requires specific information about the difficulties your child may experience in a classroom or examination situation. This does not mean, however, that you should not be involved in the application process.

<http://www.boardofstudies.nsw.edu.au/disability-provisions/>

And BOSTES advises schools thus:

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

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

Despite the exhortation above to schools to 'advise' parents, and the advice to parents that they may be 'involved' in the process, and despite a school's legislatively imposed duty to 'consult' with parents with respect to

the adjustments (*Standards*, s. 3.5 and 6.2 (2)(a)), in practice in our experience, parents generally have no input whatsoever into applications until after the initial rejection and in the context of the later appeal process – a process which depends on the production of ‘new’ evidence not previously submitted.

Appeals are not entertained on the grounds that a school has:

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

or on the grounds that the school’s staff member nominated to be the person responsible for BOSTES applications is perpetually ‘sick’ or ‘too busy’.

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

Similarly, professionals report that, once the parent finally does succeed in obtaining a copy of ‘what finally went’, the professional is astounded to note that the school has selectively tweezed out a few passages from the professional’s report and sent to BOSTES only those passages, with the result that the overall impression left is far different from that intended by the authoring professional, and the disability adjustments applied for are quite different from what the professional had expressly recommended.

5.4 ‘Cheating’

Parents report that their enquiries to BOSTES are sometimes met with a thinly disguised response to the effect that the parent must be some kind ‘dodgy cheat’, attempting to fraudulently procure an ‘advantage’ to which their child is not entitled.

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

A typical application for HSC exam adjustments could be expected to include a report from a developmental paediatrician, an educational psychologist, an occupational therapist, a language pathologist, an optometrist or ophthalmologist and/or an audiologist, together with reports

from several of the child's teachers describing how the disability has been affecting the child's schoolwork and past tests and exams.

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

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

5.5 "Show us how you can fail first"

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

Schools are told:

You must submit two extended responses/essays and at least one of these must be from an assessment task: 6th FAQ here:

<http://www.boardofstudies.nsw.edu.au/disability-provisions/faq-schools.html> and page 4 here:

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

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

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

This process is tantamount to testing a child with low vision without their glasses, and then if they fail the test, giving the glasses back – but still 'counting' the first attempt and its resulting poor mark towards the child's final grade.

By failing on the in-school assessments, the child is seen as 'proving' that they do indeed have a disability and are in need of the professionally recommended disability adjustments.

The effect on the academic self-concept and self-esteem of a very clever and usually high-achieving child does not figure in the thinking behind this cruel 'fail first' process.

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

5.6 The coercive 'power' of the BOSTES website

Reference was made in **Part 2** above to the information which BOSTES posts on its websites with respect to disability adjustments for the HSC final exams. This information is replete with rules and regulations and admonitions.

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

This is not the case.

What appears on BOSTES website is simply bureaucrats' self-authored, self-serving, capricious **policy, not law.**

The website 'rules' or 'guidelines' or 'FAQs' are attempts by BOSTES to unilaterally circumscribe/narrow/limit what is deemed to be a 'reasonable' (*DDA*, s. 4(1)) adjustment under the legislation – but such website pronouncements, being mere policy and not law, are always challengeable and are regularly not upheld or obeyed on appeal.

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

- Disability adjustments are "designed to help students who couldn't otherwise make a *fair attempt* to show what they know in an exam room." <http://www.boardofstudies.nsw.edu.au/disability-provisions/>
- Disability adjustments are available only where "the disability is such that a practical arrangement is required to *reduce disadvantage* in

an exam situation.”

<http://www.boardofstudies.nsw.edu.au/disability-provisions/>

- Disability adjustments are available only to “students who wouldn’t otherwise be able to make a *reasonable attempt* at an examination paper.” <http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.html>
- Adjustments are available only for “a disability that would, in a normal examination situation, *prevent* the student from reading the examination questions and/or communicating a response.” <http://www.boardofstudies.nsw.edu.au/disability-provisions/rules.html>
- The student must prove that they are unable to use one kind of disability adjustment before they will be allowed to have a different kind (usually in the context of being required to fail when dictating to a scribe before being given permission to type answers on a laptop): http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf page 4 (and see **Part 5.5** above and **Part 10.2** below)
- A diagnosis of a disability may in some cases justify the provision of **5 minutes’** extra time per half hour http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf (pp. 6-7) but no more, regardless of the level of impairment occasioned by the disability – be it for example mild dyslexia or severe dyslexia – and regardless of the amount of additional time which has been recommended by the diagnosing professional, and regardless of whether the diagnosing professional has supplied evidence that the child reads or writes **half** as fast as a child without disability or a **quarter** as fast or an **eighth** as fast.

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

In fact, the *Standards* themselves say nothing about any of the above ‘rules’ – which are merely BOSTES policy and not law.

Specifically, the *Standards* say nothing about anyone making a ‘fair attempt’ or a ‘reasonable attempt’ or being ‘prevented’ from doing anything, or showing how they can fail in their attempt to use one type of

adjustment before a different one will be approved. The *Standards* themselves say nothing about 'reducing disadvantage' or a prescribed maximum of 5 (or any other numeral) minutes per half hour additional time.

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

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

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

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

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

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

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

*Testing entities **should defer to documentation from a qualified professional** who has made an individualized assessment of the*

candidate that supports the need for the requested testing accommodations. (page 7)

The BOSTES policy of NOT doing that reflects the sometimes thinly veiled suspicions on the part of its representatives that the opinions of professionals cannot be trusted, either because the professionals are incompetent, or because some professionals are supposedly too influenced by the demands of their parent-clients and are consequently forced to deceitfully document a disability which does not in fact exist, as discussed in **Part 5.4** above.

Despite what schools are led to believe by BOSTES, in reality schools, parents and professionals are not necessarily 'bound' by the lists of seemingly 'allowable' adjustments which appear on the BOSTES website. The latter constitute simply bureaucrat-authored **policy** – but they are **not law** and may be [and in my experience often are...] overridden by the recommendations of a professional who supplies cogent evidence in support.

In particular, the 'case studies' portion of the BOSTES website here: <http://www.boardofstudies.nsw.edu.au/disability-provisions/case-study.html> , and the 'case studies' section of the Schools' Guide here: http://www.boardofstudies.nsw.edu.au/disability-provisions/pdf_doc/schools-guide-disability-provisions.pdf (pp. 6-7) and the statistics table here: <http://www.boardofstudies.nsw.edu.au/disability-provisions/2011-2014-stats-freq-dist.html> leave the impression that, as a matter of BOSTES policy, "X is available for Y, and Z is available for Q" or "We never allow ABC for XYZ."

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

- would arguably constitute an 'advertisement' for purposes of s.44(2), and
- "could reasonably be understood as indicating an intention...to do an act that is unlawful under a provision of Division...2" of Part 2 of the *DDA*, viz. s. 22(2A).

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

Is this situation in keeping with a policy which claims to aspire to provide “*all students with opportunities to ... demonstrate achievement*”?

6. Parents’ responses: BOSTES appeals and HRC complaints

Some parents accept the kinds of excuses outlined above and listed in the **Appendix**. They crumble under the pressure of continuing to negotiate with their school or with BOSTES - and they decide to do nothing.

Some don’t, and instead resolve to pursue the matter at length with the school principal or with other senior educational administrators or with DEC or with BOSTES. If still unsuccessful, some parents go on to lodge appeal after appeal with BOSTES or to file a complaint with the HRC.

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

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

So ultimately parents who appeal do ‘win’ - but at what cost and stress?

The schools or BOSTES in these cases were not ‘forced’ by the HRC to approve or implement the disability adjustments (as it is not the role of the HRC to **tell** the parties what to do).

Nevertheless, in each case it became increasingly evident to all parties that what had been professionally recommended for the child:

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

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

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

7. Inequities inherent in the BOSTES system for disability adjustments for HSC final exams

Parents who are determined to take the kind of HRC action described above in the face of an initial BOSTES rejection tend to be feisty, well-educated, well-informed, well-connected, articulate, thick-skinned and thoroughly skilled at making a nuisance of themselves until the professionally recommended disability adjustments are finally granted.

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

Most parents simply don't know what to do.

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

Accordingly, in the face of initial school rejections and teachers' expressions of reluctance to apply to BOSTES, these parents elect to do nothing.

Their children with disability then receive exactly that – nothing.

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

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

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

On the one hand, some are quite **wealthy** and can afford the very best barristers and the very best medical and other professionals. They can and do consult multiple highly-credentialed specialists and collect numerous well-written and well-argued reports strongly recommending disability adjustments. Some of these parents have children in private schools but some also have children in State schools.

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

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

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

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

Private psychometric and disability assessments by skilled professionals can be very expensive. Some university psychology departments can administer less expensive ones but these tend to be performed by students or interns under supervision. Most public child and adolescent health services cannot or do not offer them.

This patent inequity based on wealth is of great concern.

A way needs to be found so that all children with disability can have their degree of impairment independently assessed by competent professionals on a wealth-blind and sector-blind basis. **It should not be a contest to see who can pay for, collect and thus submit the greatest number of costly reports.**

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

8. Schools' dissatisfaction with the BOSTES system for disability adjustments for HSC final exams

Even school leaders and teachers regularly and publically express great dissatisfaction with what they regard as the inequitable way in which BOSTES is implementing its program for disability adjustments for HSC final exams.

Teachers and school counsellors allege that they are expected to gather the necessary evidence and submit cogent applications to BOSTES without having ever been trained in how to do that and without being allowed enough time to do it properly. Some report that they end up doing it at home on weekends.

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

When they ask BOSTES for reasons to justify the acceptance of one of their applications but not another almost identical one, they are told simply that the second applicant 'did not meet the guidelines'.

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

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

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

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

9. BOSTES' system disadvantages NSW candidates applying to university vis-a-vis applicants from other jurisdictions

9.1 by offering such stingy adjustments compared to other jurisdictions

Parents across Australia report that there is little consistency among BOSTES and the various other State testing administration authorities with respect to their policies on disability adjustments for Year 12.

Some States offer very generous adjustments for Year 12 final exams with decisions being made on a case-by-case basis by individual principals who personally know the applicant child and the history of the disability and its long-term effects on the child's exam performances at school.

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

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

Parents and schools report that in recent years BOSTES' guidelines for disability adjustments for HSC final exams are being applied in an increasingly stringent and miserly manner. For example, 1177 students were granted extra time in 2011 but by 2014 that number had fallen to 360: <http://www.boardofstudies.nsw.edu.au/disability-provisions/2011-2014-stats-freq-dist.html> .

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

These sensationalised media stories invariably contain copious unfounded and evidence-free assertions to the effect that children attending private schools receive preference over than those attending State schools (sometimes with a distinct subtext of 'private schools are cheating').

However, little consideration is given to the reasons why such children may have been enrolled at a private school in the first place (eg, extra

remediation and understanding, and more expert support for the disabilities), or the fact that the private schools in question simply take the ever-increasingly rigorous and complex BOSTES application procedure more seriously, and allow their staff sufficient time to prepare and submit applications effectively.

Further, it is in the interests of private schools to enable as many of their students to accurately show on their HSC exams what they have learned and what they can do, since the school's Year 12 results and percentages of high ATARs are invariably used by the school for the purpose of marketing and advertising what is, after all, a business. State schools on the other hand are under no such pressure to maximise the number of high ATARs as they are not competing for fees with a school down the road.

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

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

For example, the guidelines set down by both the Queensland Curriculum and Assessment Authority for the QCS Test (the only Year 12 State test in Queensland) (<http://www.qsa.qld.edu.au/2132.html>; <http://www.qsa.qld.edu.au/1102.html>) and the International Baccalaureate ('IB') (<http://www.ibo.org/programmes/pd/special/documents/dpspecialassessment.pdf>) are seemingly much more generous, especially in the case of the IB.

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

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

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

Obviously, such students with disability in the latter category are thereby disadvantaged vis-a-vis students in the former.

How many NSW HSC graduates are actually missing out on their first choice of university course because the places have already been filled by students with disability from a State or IB system which had far more generous disability adjustments?

9.2 by ensuring that not all eligible students with disability will apply

Teachers and principals need current information on realistically **how many students actually have a disability** (and accordingly how many can realistically be expected to require disability adjustments for their HSC final exams so that they may show what they have learned and what they can do **on the same basis as** a child without disability).

For example, one NSW primary school with an enrolment of 450 had a total of 3 students granted disability adjustments for NAPLAN (one of whom had a broken arm). On these figures 0.6% of the children in that school were students with disability (or 0.4% if we don't count the presumably temporary broken arm).

How many students with disability are there really?

In one of its own publications

(https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwinm6b9i4PLAhVCHpQKHf_QCZYQFggyMAM&url=http%3A%2F%2Fwww.nswteachers.nsw.edu.au%2FDownloadDocument.ashx%3FDocumentID%3D1242&usq=AFQjCNEQVPaTRyNZ77EGCti_TtxXlmos0g&sig2=xPeipmmEuTg17IBV281doA), BOSTES expressly accepts the DEC statistics that there are [**emphasis mine**]:

*...over **100,000** children with disabilities in NSW schools. This figure, which includes State, Catholic and Independent Schools, is based on the estimation by NSW Department of Education and Communities (DEC) that approximately 90,000 (**12%**) students who have additional learning and support needs (ie disability, learning difficulty or behaviour support needs) are enrolled in more than 2200 NSW public schools. This includes the full range of students who need adjustments to access and participate in learning under the Disability*

Standards for Education 2005. Included are 35,000 (4.7%) students who are currently confirmed as having a disability (against the Department's criteria for specialist services: intellectual, physical, hearing, vision, mental health, autism), and a further 55,000 students with additional learning and support needs relating to difficulties in learning or behaviour (including dyslexia, reading and/or communication delay and ADHD) (Every Student, Every School, 2010). (page 5)

Accepting the DEC estimate that approximately **12%** of students may be expected to have some sort of disability or learning and support need, why then did 3 students in the school featured in the example above qualify for disability adjustments for NAPLAN – where were the other 51?

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

According to its own statistics

(<http://www.boardofstudies.nsw.edu.au/disability-provisions/statistics.html>),

BOSTES claims that almost 100 schools submit no applications whatsoever:

<http://www.boardofstudies.nsw.edu.au/disability-provisions/disability-provision-schools.html> . Could roughly 12% of schools really have no students with disability at all?

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

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

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

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

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

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

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

10. Recommendations

10.1 Allow unlimited time and control output by word limit instead

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

As noted in **Part 5.5** above, it seems from the BOSTES website that '5 minutes per half hour' is the amount of time most frequently awarded (in the very rare cases when extra time is in fact approved at all...).

And as noted in **Part 4.1** above, extra time to address the effects of a disability which results in a slow processing speed or a slow reading speed or a slow handwriting speed or a poor working memory or an uncorrectable vision impairment does not bring the child with the disability up to the level of a child without the disability – it just helps.

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

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

And, contrary to the facile assumption and unexamined belief that 'of course everyone will do better with more time', the research has shown that:

- while there is a significant difference between scores obtained by students with disability and by students without disability when both write exams under timed conditions, there is by contrast no significant difference in test performance between students with disability and students without disability when students with disability are granted extra time;
- students without disability do not perform significantly better when allowed extra time than when not allowed extra time;
- when everyone is given extra time, the scores of students without disability do not increase (or do not increase significantly), whereas the scores of those who actually **need** the extra time (ie, students with disability) do indeed increase; and
- therefore, extra time is an appropriate adjustment for students with disability.

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

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

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

For example:

"Analyse Juliet's relationship with her father and consider how it might have been different had Juliet been alive today.

Word limit: 1000 words

This task can reasonably be expected to take [one hour/two hours/whatever], but you are free to leave at any time or to stay as long as you wish to complete it.

However, **no matter how much you write, only the first 1000 words will be read and graded."**

Clearly in a closed-book exam, a student who has not read *Romeo and Juliet*, and who has not been listening when the play has been discussed in

class, and who has not given any thought to the characters' personalities and motivation or to the historical context and the prevailing cultural views of the time will not do a good job on this question **no matter how long they choose to sit there and look at it.**

No amount of additional time will help such a student – or anyone else (no matter how clever...) if they have not learned their work and properly prepared for the exam. Five minutes per half hour (or even 30 minutes per half hour...) will not magically put the answers into the head of a student who has not already done that for themselves long before the exam time starts to run.

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

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

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

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

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

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

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

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

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

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

10.2 Allow choice: handwriting or laptop or scribe

Without doubt the second of the two 'hardest to get' disability adjustments is permission to type long prose answers on a laptop – even when such a recommendation has been strongly made in a series of reports from several different kinds of professionals, and even if the child has never been able to learn to cursive handwrite and has accordingly been doing absolutely all their schoolwork on a keyboard since Year 2.

In 2014 only 113 candidates out of 73,000 were allowed to type their long prose answers on a laptop:

<http://www.boardofstudies.nsw.edu.au/disability-provisions/2011-2014-stats-freq-dist.html> .

BOSTES' position is clear:

The HSC is a timed, hand-written examination so the use of a computer is granted only under very stringent conditions where there is no appropriate alternative provision.

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

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

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

Yet again, a child must show how they will 'fail' when using an alternative adjustment in order to be eligible for the very adjustment (laptop) which the child's professionals have expressly recommended.

BOSTES' and the Minister's stance above is somewhat hard to reconcile with a plethora of other BOSTES documents and pronouncements such as those listed in **Part 5.1** above, and such as Principle 5 of BOSTES' "10 principles for special examination modifications" (http://www.boardofstudies.nsw.edu.au/special_ed/exam-modifications.html) which refers expressly to assistive technology.

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

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

Further, the appointed scribe is almost always a child from a lower grade who, though unquestionably well intentioned, unknowingly makes spelling and syntax mistakes in their transcriptions. And of course those mistakes are then counted against the Year 12 dictator, not the younger child scribe who is doing their best with words they may have never encountered before, even if the Year 12 dictator has not been afforded an opportunity to proofread and edit what the younger scribe has done their very best to quickly scribble out.

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

And not all children with disability will want to.

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

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

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

Clearly for this student a laptop would not have constituted an 'advantage' but rather a 'disadvantage'.

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

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

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

10.3 Introduce teacher PD on disabilities and disability adjustments

Clearly teachers and school leaders need to be better informed about their obligations under the *Standards* and about how to support Year 12 students applying for HSC disability adjustments.

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

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

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

Problems normally arise when:

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

Despite teachers' generally good intentions and willingness to respond to the needs of children with visible disability, GLD Australia anecdotal data suggest that the vast majority of primary and secondary teachers have not been

formally trained in learning disabilities – how to identify them in the classroom and how to address them.

They are not familiar with disability literature or with federal or State legislation addressing disability, and they are generally unable to read and interpret professionals' reports.

When I lecture on gifted children with disability at the university level to teacher trainees who are about to graduate and become teachers, virtually none claims to have ever had any training whatsoever in disability, or to have any confidence in their preparedness to meet the needs of students with disability.

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

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

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

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

Such DEC and BOSTES documents tend to pay lip service to the *Standards*, but fall down in the implementation.

Despite these documents' accurate and aspirational statements, experience reveals that the rhetoric of the DEC and BOSTES websites is not filtering down and is not being implemented in any meaningful, consistent or standardised way.

Some specious reason is invariably pointed to in an attempt to justify inaction – often a simple claim that acting in compliance with the *Standards* would be just 'too hard'.

The current Review's Issues Paper (referred to in **Part 2** above) notes that:

BOSTES also coordinates the implementation of the NSW Government's *Great Teaching, Inspired Learning: A Blueprint for Action* across all NSW schools. (Issues Paper, p. 3)

This document used to be available in the form of a 20-page paper booklet dated March 2103 (of which I have a saved copy), but now seems to be available only as a website rather than as a printable document: (<http://www.nswteachers.nsw.edu.au/great-teaching-inspired-learning/blueprint-for-action/>) (**Blueprint**)

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

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

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

To the rescue comes another BOSTES document called *Classroom Management and Students with Special Educational Needs* https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKewinm6b9i4PLAhVCHpQKHf_QCZYQFggyMAM&url=http%3A%2F%2Fwww.nswteachers.nsw.edu.au%2FDownloadDocument.ashx%3FDocumentID%3D1242&usq=AFQjCNEQVPaTRyNZ77EGCti_TtxXlmos0g&sig2=xPeipmmEuTg17IBV281doA.

This document admits that university training of teachers realistically can't be expected to accomplish this objective because: "...*given the diverse range of students with special needs who are now enrolled in mainstream schools, it is highly unlikely that graduating teachers can be prepared with sufficient knowledge to cater for all of the students with special needs they will encounter in their first classrooms*" (page 24).

Instead, advises the same document, the training must be undertaken once the graduates are already teaching in schools: "...*classroom teachers (whether beginning or experienced) need systemic support to address the*

very difficult and complex task of catering for children who have special needs ... Teacher education students once having entered the workforce must be supported by ongoing professional development, specialist staff expertise, assessment and classroom resources and guidance and direction in ways to address learning and support in their classrooms” (page 24).

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

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

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

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

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

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

As noted in **Part 9.2** above, teachers and principals also need current information on realistically **how many students actually have a disability** (and consequently how many can realistically be expected to require disability adjustments for their HSC final exams so that they may show what they have learned and what they can do **on the same basis as** a child without disability).

10.4 Introduce a phone advisory service

Another way of providing teachers and principals with practical advice on the *Standards* and the BOSTES application system would be for BOSTES to

offer some kind of anonymous information/advice/help line for school staff to ring when they are reluctant to admit to BOSTES or in front of their peers or in front of parents that they don't know what a disability adjustment looks like or that they don't know what their obligations are under:

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

and when they don't know how to even begin to prepare and submit a BOSTES application.

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

10.5 Provide notices to parents about disability adjustments

Perhaps DEC could organise for each State high school to regularly include in its parent newsletter some kind of notice about the availability of HSC disability adjustments and who to contact to enquire about them.

This could be supported by a separate paper notice or flyer or brochure to be taken home by each child and/or distributed at parent/teacher interviews.

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

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

DEC could also take steps to ensure that each individual State school website contains consistent and useful information about disability and the *Standards* and HSC disability adjustments in a way which is easy for parents to access (for example, a clearly visible tab on the home page, rather than a page embedded under several sub-topics in drop-down menus).

Granted, such information is already included on the BOSTES website, but it would be good if it could be made more widely available for parents who, for whatever reason, are unable to find their way to this embedded link: <http://www.boardofstudies.nsw.edu.au/disability-provisions/students-and-parents.html> .

10.6 Seek legal advice with respect to the rhetoric on the BOSTES websites

In light of the issues raised in **Parts 5.1 and 5.6** above, BOSTES might wish to have its legal advisers review all the blanket, categorical assertions, 'rules', prohibitions, proclamations, claims and pronouncements on its websites referred to in **Part 2** above, in particular with a view to forming a view as to whether any of them arguably fall foul of s. 44 of the *DDA* or of ss. 6.2 or 6.3 of the *Standards* (as mooted at the end of **Part 5.6** above).

11. Finally.....

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

Forcing children with disability to write their HSC exams without their professionally recommended disability adjustments is like requiring a vision-impaired child to write their exams without wearing their glasses.

Obtaining appropriate disability adjustments should not be a matter of 'luck' – a lottery whose result depends largely on which school a child happens to attend and whether that school happens to have sufficient experienced staff in a given year to prepare and submit cogent applications for its students with disability.

I cannot emphasise enough the disruption, stress and trauma experienced by countless NSW families whose children with disability are applying for adjustments for the HSC final exams.

Bitter conflict is occasioned by:

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

Sometimes, the unpleasantness and anguish goes on for months and months, and the arguments become ever more acrimonious and the positions ever more entrenched.

Some families have disintegrated under the pressure of what one distraught parent termed 'a slow-motion train wreck'.

And all the while the hapless Year 12 child with disability plods along, trying to calmly prepare for what their school has repeatedly told them are the 'most important exams of your whole life' – and anxiously wondering each day if they will be having disability adjustments, and wondering also when in the world they will have time to learn and to practise how to use whatever adjustments they eventually find themselves endowed with.

I have never seen anything like this level of disquiet and harm to families in the straightforward systems under the auspices of either Queensland or the IB. Why should this be necessary in NSW?

The implications of systemic failure to implement disability adjustments for NSW HSC final exams are serious for **all** children with disability.

For **gifted** children with disability, however, such failure highlights the huge difference between, on the one hand **high achieving** gifted children with disability who will grow up to make remarkable contributions to Australian society and, on the other hand **underachieving** gifted children with disability who may go through school feeling angry, misunderstood and frustrated, and who consequently may later elect to turn their high intelligence to somewhat less worthy pursuits.

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

By not providing appropriate assistance to children with disability when they are in Year 12, are we thereby ensuring that for the next 60 years these individuals will be draining the Centrelink system instead of contributing to the income tax one?

We know that the outcomes for students with disability are generally worse than for students without. Fewer students with disability undertake university study, fewer gain full-time employment and, as adults, more end up earning a lower income than employees without disability. It is the sad reality that many are not going to end up anywhere good.

Allowing children with professionally diagnosed and documented disability to obtain approval for professionally recommended disability adjustments for their HSC exams is but one way to address this bleak scenario.

I am grateful for the opportunity to contribute to this Review.

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

GLD Australia is of course very happy to provide further information with respect to this sub-population of children with disability, or to otherwise collaborate with the Review Panel in the gathering of its evidence.

Appendix

Examples of excuses proffered by teachers, school staff and BOSTES personnel to justify a refusal to apply for, to approve or to implement professionally recommended disability adjustments for HSC final exams

- *We cannot understand your professionals' reports recommending the disability adjustment and no one here knows the meaning of some of the words in the reports, so we won't forward the report's recommendations to BOSTES*
- *Our school has a policy of not 'labelling' children so we can't accept the diagnoses made by this professional in this report, so we won't be forwarding it to BOSTES*
- *Your child may have an IQ in the 99th percentile with a processing speed in the 35th percentile, but 35th percentile still qualifies as 'average' and so it does not qualify as a 'disability' and so we don't have to do anything about it*
- *The issue diagnosed by the professional was called a mere learning '**difficulty**' and not a 'real' disability, and accordingly your child is not entitled to the protection of the legislation and not entitled to disability adjustments*
- *The school will not accept this professional's report because the author is a paediatrician or a language pathologist or a psychologist or an occupational therapist, and the author has no teaching qualifications and only teachers understand what children need*
- *The school will not accept this medical professional's report because it is full of spelling and grammar mistakes [possibly why the author had chosen to study medicine instead of journalism?]*
- *The specialist or doctor authoring this disability report is not 'registered' with the Department of Health/Department of Education*
- *Our school has a policy of not accepting reports from language pathologists because they don't know anything, so if you want these disability adjustments you'll need to get all the tests re-done by a psychologist*
- *We don't have to implement the recommendations in this professional's report because we don't agree with them – after all, who is paying the writer's fees? Some professionals will write anything in reports just to get paid and keep their clients happy*
- *I am the Principal here and I can pick and choose who in my school gets recommended to BOSTES for disability adjustments and who doesn't and which kinds of adjustments I'll recommend, and there is no appeal from my decision*
- *We're not covered by BOSTES or by the legislation because we're a private school*

- *Your child could not have ADHD – he just needs to learn to concentrate more....*
- *The disability described in this report is not a 'registered' disability*
- *All learning disabilities are identified in early childhood. Your child is in Year 12 but his were not identified until Year 8. Accordingly, despite your specialists' reports, your child could not have a disability – or if he did have one, then it must be gone by now*
- *Well there are no disability adjustments at uni so your child had better learn to manage without them now*
- *Disability adjustments are only for low IQ children or for children who are failing or have visible physical disabilities – your child is already clever and not failing – in fact, he is doing better than most in Year 12, and the fact that he is striving to do even better on the HSC, in spite of his disability, is irrelevant – he will still manage to 'pass' the exams without the adjustments*
- *Your child is so clever that if he is allowed to have extra time for exams, he will probably 'beat' the student who is currently standing first in Year 12 and who is probably going to be this year's dux – and then that child's parents may complain*
- *Your child cannot have the recommended disability adjustments because someone from the department of education or BOSTES rang the school and spoke to the school counsellor who said they had never met or heard of the child, and therefore the child could not have a disability because all children with disability have bad behaviour and are thus always well known to the school counsellor*
- *Your child can't have this disability adjustment because we have plenty of other students in Year 12 who are doing worse and they haven't applied for it (ie, I expect you to feel better about not getting your child's needs met if you think that we are not meeting other students' needs either)*
- *Your child with dysgraphia cannot have access to the professionally recommended laptop for the HSC final exams because another child might trip on the cord, or because 'then everyone would want one', or because the parents of other children might complain since your child is not failing and the adjustment might be seen as an advantage over other children and hence unfair*
- *Your child had disability adjustments last year but now her grades are starting to improve so we're not going to let her have them anymore [ie, the adjustments are obviously working, so let's withdraw them]*
- *We don't give slow runners and slow swimmers a head start in the Olympics, so why should we give slow thinkers and slow writers extra time and a word processor for HSC exams*

- *Disability adjustments simply amount to 'cheating' and it is not in the interests of a child's moral development if they witness their parents encouraging cheating*
- *Allowing the recommended disability adjustments would send the message to your child that they are entitled to 'special treatment' but when they grow up, they won't be getting any 'special treatment' from the telephone company or the tax office*
- *Your child doesn't need these disability adjustments – he'd soon start to get better marks if you punished him for bringing home bad ones*
- *Allowing the recommended disability adjustments would damage your child's self-esteem by sending the message that there is something 'wrong' with the child. Just as a child who has poor eye sight must come to terms with the need to wear glasses, so a child with a learning disorder must come to terms with the fact that they are just not very bright*
- *If we allow your child to have these disability adjustments he'll be the only student in the school having them and that may cause him stress, as children don't like to be seen to be 'different'*
- *Your child is lazy and you are just making silly excuses for them. Your child is clearly very bright, and should be able to get by without the disability adjustment which you are applying for and which this professional is recommending. I'm sure he could write faster if he really 'wanted to'*
- *You are an over-protective, pushy, unduly ambitious parent, and by bringing in this so-called evidence of a disability, you are attempting to gain an advantage for your child. Face it – despite all your IQ tests and disability reports, there is nothing wrong with your child – they do not have a disability - they are simply not very bright*
- *Yes your child qualifies for separate supervision for the HSC exams but we have only one suitable room for that, and an intellectually impaired child needs it more*
- *You can't have this disability adjustment for your son because I have a daughter with special needs and she is more impaired than your son, but she doesn't have this adjustment and I have not asked for it. I don't ask her teachers to do for her what you are proposing to include in your BOSTES application for your son (ie, I expect you to stop being an effective advocate for your child with disability because I myself have been an ineffective advocate for mine)*
- *There is another child in Year 12 who has the same problems as your son but his parents aren't as rich as you and they can't afford to go get some fancy-dancy professional to write a report on their child – we can't apply to BOSTES for disability adjustments for that other child and so it wouldn't be fair to do it for your son*

- *Yes we accept that your child experiences great hand pain from being required to handwrite but we won't grant extra time as that would just allow the pain to go on for longer [tantamount to saying, "We know that it hurts you to run fast so we're not going to give you more time to allow you to run slower, in case that hurts you more and lasts longer..."]*
- *Yes we acknowledge that your child has Tourette's Syndrome and has hand tremours outside the child's control – but they're not really all that noticeable so they couldn't be important, and so this professional, in recommending that your child have access to a computer for HSC exams instead of having to handwrite, is just trying to obtain an unfair advantage for the child*
- *BOSTES has approved extra time but your child can't have if it would interfere with the invigilating teachers' lunch hour or breaks – in that case, he'll have to finish at the same time as everyone else*
- *I have agreed to implement the BOSTES-approved disability adjustments in my classes till the end of Year 12 solely because I have been so instructed to by the principal, but I want you to know that I don't agree with them and I view them as 'cheating' and so, from now on when I mark your child's in-school assignments and tests which have been completed with the disability adjustments, I will never give your child a grade higher than a D, no matter what their work truly merits*
- *Well 10% of students have a disability and we have 900 students at this school so that's 90 students with disability, and I am the only learning support person here, so realistically how can I apply to BOSTES for all of them – especially when there are plenty here who are doing worse than your child – so I won't be applying for any of them*
- *If you allege that your child has a disability and lodge professionals' reports in support of that allegation and force me to apply to BOSTES on their behalf for the HSC, then the child will have to leave the school [admittedly somewhat surprising in a State high school when the child resides within the catchment area]*
- *The school will go through the motions of attending the HRC conciliation conference with the BOSTES representative, just to save face, but no matter what happens there, BOSTES will never agree to any kind of conciliation, settlement or resolution, with the result that your only option would then be to commence court action, and BOSTES has unlimited money to throw at this. They will employ [insert name of famous barrister...] and they will win and then you will be responsible for all their costs and that will probably send you bankrupt and you will lose your house*
- *[in a rural setting] If you force us to apply to BOSTES on your child's behalf for disability adjustments for the HSC exams, there will be financial consequences with respect to your business, or social consequences with respect to the local townspeople, or emotional or grades-related consequences at school for your child*

- *Despite your professionals' recommendations with respect to extra time, there will be none for your child. Students who are truly gifted never need extra time for tests – they just 'know' the answers. All students would improve if given extra time – if they had more time to come up with the right answer*
- *We don't need any research to tell us that all gifted students are able to work quickly and don't need extra time – we just **watch** them*
- *This is a selective high school and your child could not have passed our entrance test if he had had a disability. We would have picked it up. So he doesn't have one, despite what all your professionals' reports allege, and we will not allow him to apply to BOSTES for HSC exam adjustments*
- *There are no children with a learning disability in this selective school – so the legislation does not apply to us here. Accordingly, we will not even read these medical and psych reports recommending adjustments on the grounds of disability because disability could not possibly exist and of course we will not apply to BOSTES or help you to do that yourself*
- *This is a selective high school and we don't like our students to apply for disability adjustments for the HSC in case BOSTES forms the view that we haven't been teaching them properly here*
- *Yes I'd like to help you but I applied to BOSTES last year for disability adjustments for a few of our students here, and frankly it was such a stressful and prolonged and acrimonious experience for me that emotionally I just don't feel up to doing it again this year, sorry.....*
- *Well yes we agree with your son's professional's report that he has an accurately measured reading speed which is very slow, but we won't apply to BOSTES for disability adjustments for him because we don't agree that he has a 'real' disability or disorder for purposes of the Standards – rather he has simply never been taught to read correctly.*

He has no word attack skills and he has been allowed to just memorise words by shape – but by Year 12 there are too many words to memorise that way. He can't 'see' the difference between words such as 'accoutrement' and 'accomplishment' and he needs remedial teaching. But we are a high school and we don't teach students how to read here – they should already be doing that before they get here – they should have learned it in primary school and it's not our fault if they haven't. Pity though, as he's such a clever boy and he would have done well at uni. Have you thought of taking him out of Year 12 and enrolling him in an adult literacy program to teach him to read?