

Documenting a student's need for disability adjustments for classroom activities and assessments and for in-school and State tests and exams

Information for parents

(as at 8.3.17)

1. Ask the diagnosing professional for 2 reports:

It is important for parents to ask each professional for **2 separate** and independent letters or **reports** – one for the referring GP and parents (and perhaps the child, depending on age), and another specifically drafted for the school, the NSW Education Standards Authority (NESA) [formerly BOSTES], the Queensland QCAA, or other testing administration authority.

1.1 The **first** report can be written using non-standard, so-called 'non-stigmatising' euphemisms or descriptions of the child's issues so that the child (depending on age) can also read it. These could include descriptors such as a 'relative weakness', 'learning difficulty', 'learning difference', 'learning challenge' and such. This report should avoid the use of the word **disability**, and should if possible include some kind of optimistic foreshadowing that the child's problems are solvable, or at least will improve in time.

1.2 With respect to the **second** report, after specifying the diagnosis and describing how it impacts upon the child's academic performance, it is important for the professional to thenceforth call the child's problem a **disability** rather than a 'difficulty' or a 'difference' or some such other nebulous euphemistic descriptor. The word **disability** will arguably bring the child within the protection of federal disability discrimination legislation ('**Legislation**'). In short, it should be called a disability if it falls within even one of the following:

- (a) total or partial loss of the person's bodily or mental functions; or
 - (b) total or partial loss of a part of the body; or
 - (c) the presence in the body of organisms causing disease or illness; or
 - (d) the presence in the body of organisms capable of causing disease or illness; or
 - (e) the **malfunction, malformation** or disfigurement of a part of the person's body; or
 - (f) a disorder or malfunction that results in the person **learning differently** from a person without the disorder or malfunction; or
 - (g) a disorder, illness or disease that affects a person's **thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour**; and includes a disability that:
 - (h) presently exists; or
 - (i) previously existed but no longer exists; or
 - (j) may exist in the future (including because of a genetic predisposition to that disability); or
 - (k) is imputed to a person.
- To avoid doubt, a **disability** that is otherwise covered by this definition **includes behaviour** that is a symptom or manifestation of the disability.

Most children in this context would usually qualify under (e), (f) or (g).

2. Contents of the report:

After outlining the diagnosis and level of impairment, the professional should recommend whatever they believe the child needs in the way of disability adjustments (eg, extra time, rest breaks, use of a computer, separate supervision, scribe, personal reader, coloured paper, alternative format test papers, dimmed lighting, personalised exam timetabling, etc).

A diagram showing a variety of such possible adjustments appears at the end of this document, but a professional is free to recommend whatever adjustment they believe the child needs, regardless of whether that adjustment is listed as being 'allowed' on a testing administration authority's website (see also Part 5.5 below).

After listing the types of adjustments being recommended, it is important for the professional to start to use the term **disability adjustments** for whatever they have recommended (rather than 'accommodations' or 'provisions' or 'concessions').

The professional should then go on to include as many as possible of the following points, **to the extent that they are relevant to the child:**

- *in light of the child's diagnosis and level of impairment, the professional considers that the disability adjustments recommended above ('Adjustments') constitute **reasonable** adjustments to the child's educational program [as evidenced by the fact that the child's school has already been implementing the Adjustments for the past xx years]*
- *the Adjustments are designed to allow the child to access and participate in their classroom activities and assessments and in State exams without discrimination and **on the same basis as** students without the child's disability*
- *the Adjustments are **essential** to remove some of the disability-related barriers which are currently preventing the child from demonstrating in the classroom and in tests and exams what they have learned and what they can do, on the same basis as a child without disability*
- *of course the Adjustments will **only partially compensate** for the effects of the child's disability, and will in no way confer an unfair advantage on them. They will not completely enable the child to perform as well as if they did not have the disability, and accordingly they will not unilaterally 'level the playing field', but they may serve to make it just slightly more level*
- *the Adjustments are required **every day** and for **every classroom activity and assessment** from now on, including tests such as NAPLAN, ICAS, scholarship tests, select-entry class or school entrance tests, and Year 12 State exams*
- ***the Adjustments should not be withheld or withdrawn** from the child on the grounds that the child is already quite clever, or already achieving acceptable grades, or not failing, or seems to be improving, or has been accelerated, or appears to be not working hard enough, or could be taking*

medication but isn't, or must first improve their behaviour, or on the grounds that others are doing worse but have not been diagnosed with disability or have not applied for disability adjustments

- *the disability which has been diagnosed is a **permanent** (albeit invisible) disability and, being neurobiological in nature, the disability cannot be expected to 'clear up'. It can be managed (and the Adjustments will assist in that process) but it cannot be 'cured'.*
- *if a **medicine** has been prescribed, again that will assist the child, but it will not 'cure' the disability. Being largely outside the child's control, the disability cannot be addressed by continually asking the child to 'try harder' or to otherwise unilaterally overcome it*
- *the child will need **time to learn** to use and/or to work with the Adjustments, and should not encounter them for the first time in an activity or assessment which 'counts' towards the child's grades*
- *even **with** the Adjustments, the child will have to **continue to work very hard** to attempt to overcome some of the effects of their disability, as no amount of Adjustments will help a student who has not learned their work and has not properly prepared for their exams*
- *failing to implement the Adjustments would mean **treating the child less favourably** than students without the child's disability and level of impairment, and would require the child to comply with unreasonable requirements and conditions with which the child is, by reason of their disability, unable to comply, but with which a student without that disability would be able to comply*
- *failing to implement the Adjustments would thus **disadvantage** the child and would compromise the child's prospects for academic achievement by restricting their opportunities to demonstrate competence on the same basis as students without the child's disability*
- *implementing the Adjustments will **cost nothing or very little**, and will thus not constitute unjustifiable hardship for the child's school or for the testing administration authority responsible for administering State tests and exams*
- *it is essential that the child's **parents be notified** in advance of the **dates** and times of any assessments so that the child will know what to expect on the day with respect to the Adjustments*
- *in the case of a gifted child who is capable, with the Adjustments, of producing very high quality schoolwork, it is essential that the child's **parents be notified** immediately if the child's **grades** begin to fall or if the child seems to be disengaging. For such a child, it is important for teachers to continue to hold high academic expectations, commensurate with intellectual ability, and it is crucial that unexpectedly low grades are not ignored or explained away on the grounds of the child's disability. The child's academic*

results, with the Adjustments, should be the same as those of other gifted students with similar intellectual ability

- an expression of concern by the professional about the potential **emotional damage** which the child would arguably suffer if they are not provided with the Adjustments, and if they accordingly feel that they have not had an opportunity to attempt their assignments and tests on the same basis as their peers. The child's frustration and dissatisfaction with their academic performance and the resulting impact on the child's academic self-concept and self-efficacy can be expected to occur not only in the classroom and on the days when tests will be administered, but also on the days when test results are announced and when classmates compare grades, and possibly well into the child's future*
- if an application for the Adjustments has been refused by a testing administration authority for Year 12 final exams and that decision is currently being **appealed**, an expression of concern about how the appeals process and the continuing uncertainty surrounding it are causing stress for the child and impacting on the child's studies and exam preparation, and exacerbating a pre-existing anxiety disorder*
- an expression of concern that the child **may well not even complete Year 12** without the recommended Adjustments [especially if the child has been having the Adjustments for many years but has failed to have them approved on initial application for final exams at the end of Year 12]*
- some mention that other professionals have separately recommended the very same Adjustments which this professional is now recommending and an observation such as, "All **professionals are united** in our recommendations."*
- an observation that the child is particularly or severely impaired, and in fact is much **more impaired** than many of the professional's other patients/clients who HAVE indeed had the Adjustments approved in the past*
- a direction to the school that the professional's original **tests** should **not** be continually **re-administered** to the child as the 'practice effect' of doing the same standardised tests over and over may artificially inflate the child's results, thereby ensuring that their scores are then too high to qualify for the Adjustments*
- a note at the top of the report to alert schools applying to a testing administration authority for adjustments for State exams not to cherry pick only parts of a professional's report but rather to send in the **whole report**, eg:
"Test results and recommendations for disability adjustments must be considered in the context of this whole report. If this report is to be used in support of an application for disability adjustments, the entire report must be attached to or included with the application."*

3. If the professional is reluctant to include the above points in their report:

3.1 Some professionals who are not familiar with the Legislation will probably find the paragraphs recommended above **wordy, repetitive and convoluted**. However, it is worth emphasising that it is crucially important to track this very wording as closely as possible, because it serves to alert the reader to the fact that the professional (and probably the parents...) knows that the child, based on the professional's diagnosis, is arguably **entitled** to the disability adjustments under the Legislation – that they are not a gratuitous favour or a privilege and, for a child with a disability, they do not confer an advantage.

If the professional refuses to include all of the relevant points above, then ask for as many as they are comfortable with, and keep the rest to include in your own cover letter/application or to use in your [sadly, very probable....] appeal.

3.2 If a professional is **reluctant** to provide the requested report in the case of a **little** child, on the grounds that the child is still too far away from Year 12 and nothing prior to that really 'counts', remind the professional that disability adjustments are available for NAPLAN, ICAS, selective schools and selective classes entrance tests and scholarship tests, all of whose results may be, and regularly are, used to make critical decisions regarding the child's whole future.

In addition, you may wish to point to the wisdom of having unambiguous **precedents** extending as far back as possible, because any disability first documented in late high school for purposes of Year 12 disability adjustments may be regarded with suspicion as the attempt of an overly ambitious parent to fabricate a disability and thus to secure an 'advantage' for an underachieving child.

3.3 If a professional is **reluctant** to provide the requested report on the grounds that the adjustments to be recommended may not be later approved by a **testing administration authority** for the child's Year 12 State exam(s), remind the professional about the importance of setting the longstanding precedent (see preceding para), and also stress that individual schools have their own obligations to children with disability under the Legislation, independently of the testing administration authority.

Each school principal is the ultimate decision maker for in-school test adjustments for all non-State assessments up to and including the HSC trials in NSW and for all in-school assessments in Queensland except the Year 12 QCS. Adjustments will allow the child to proceed through school better able to show what they have learned and what they can do, and accordingly with a higher sense of self-esteem and self-efficacy, and enhanced academic self-concept. In any event, even if adjustments are ultimately denied at first instance for the Year 12 State exams, experience shows that, with the appropriate evidence, they are usually forthcoming on appeal.

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

3.4 If a professional is **reluctant** to include the information you are asking for on the grounds that, "I'm the professional here and **no one tells me what to write** in my reports' , then it may be advisable to consult a different professional who has a better understanding of the importance of complying with the legislative requirements.

Of course no professional is going to risk their practising qualifications, licence or reputation by deliberately including information which is not true. However, if what you are requesting is actually borne out by the professional's test results and hence is accurate, then you are entitled to ask that it be included in the professional's report. If a professional's response is, "Yes what you're asking for is accurate, but I never put that in my reports", remember that (in urban areas at least) there are plenty of other professionals who do, and who accordingly have quite a good success rate in recommending and obtaining disability adjustments.

4. Documenting the diagnosis:

4.1 Encourage the professional to document standard, **well-recognised diagnoses** on the basis of standardised tests whose results can be quantified. If appropriate the DSM-5 or ICD-10 code for that diagnosis should be cited. It will be more difficult to obtain approval for disability adjustments on the basis of professionals' reports containing non-standard diagnoses (such as 'NLD'), or diagnoses which technically no longer exist (such as 'ADD'), or nebulous descriptions of conditions which virtually no education provider has ever heard of (such as Dabrowski 'overexcitabilities'), or on the basis of reports which themselves contain spelling and grammar mistakes.

Such deficient reports furnish the school with an excuse to not implement the recommended adjustments: "Well according to this, it's not a 'real' disability so I needn't do anything about it." or "So what would this doctor know - she spent only a few minutes with this child and I have him here in my face every day - and she diagnosed him as having some dodgy condition that we've never heard of here - and anyway, this doctor's letter is poorly written and has not been proofread...so I needn't take any notice of what it says."

4.2 If the child has been diagnosed with an **anxiety** disorder, it is important for the professional to call it exactly that, rather than merely 'anxiety'. The response to the latter is often, "Well of course **all** children can be expected to feel a bit anxious before an exam".

The professional should include a description of how the child is currently being treated for the anxiety disorder (eg, taking medication, attending counselling, learning and practising management strategies and exercises) and how long this treatment has been going on, so that it is clear that this is a properly diagnosed **disorder** and not simply a fleeting feeling of performance anxiety.

Applications to testing administration authorities for adjustments for Year 12 final exams on the grounds of anxiety are likely to be declined unless the child has first undertaken some kind of treatment or therapy. Only if such treatment has not completely addressed the child's anxiety disorder should adjustments be applied for on the grounds of anxiety.

In cases of anxiety disorder, it is sometimes helpful not only to recommend separate supervision but also to advise that the child should be able to get out of the car on the morning of an exam and proceed directly to the separate supervision room so as to avoid unwanted interactions with anxious peers/friends who are about to write the same exam (since anxiety can be 'infectious').

4.3 Since a diagnosis alone is not usually sufficient to qualify for disability adjustments, it is important for a professional's report to specify not only WHICH disability adjustments are recommended but also WHY – on the basis of **what evidence**.

Accordingly, the report should include a full and complete description of what the professional actually **did** to diagnose the child's disability – what tests they administered to arrive at the diagnosis, what these tests are designed to measure, how the child performed, how the child presented during the testing, and how long the whole process took.

On the other hand, functional evidence alone will not be enough. For example, if the child has a handwriting disability, then merely submitting samples of the child's messy and illegible handwriting will not be sufficient as there needs to be evidence of a professionally identified condition or cause which is the source of the handwriting disorder, ie, a diagnosis of a disorder or disability.

The professional should include as much **detail** as possible – especially percentiles with respect to functional impairment, so that the reader can evaluate just how affected the child is by the disability – a quantification of the effect of **THIS** disability on **THIS** child with **THIS** IQ, not just the probable effect of such a disability on most children.

As well as including test scores in the format usually reported in the context of standardised tests, it is very helpful for the professional to include also an observation expressly comparing this child to a child **without** disability, eg "...his test results reveal that he is able to write/read/process **half** as fast/a **quarter** as fast/etc as a child without his disability." This will be particularly important if the child is applying for extra time, as it allows the (possibly medically untrained) reader to imagine the level of impairment in a way which is perhaps not otherwise possible.

Even if the professional's test results indicate that some of the child's scores technically fall within the 'average' or 'low average' range for the general population, this may still be a very unusual and concerning result when compared to the rest of the child's scores.

Accordingly, whenever there is a very large discrepancy in scores, this should be commented on and interpreted. If appropriate, it is important that the professional specify in the report that for **THIS** child with **THIS** IQ, the problem is statistically and clinically significant and thus for **THIS** child constitutes a **disability**. For example:

- *"Although the child's processing speed score puts them in the 22nd percentile for their age cohort, and although the 22nd percentile qualifies as 'low*

average', that still means that the child processes more slowly than 78% of other children their age – clearly a disability for a child with a FSIQ in the 99th percentile.

- *the difference between the child's scores in X and Y occurs in less than ## per cent of the population and this is both statistically and clinically significant."*

4.4 If the disability which has been diagnosed is something which is expected to be **permanent** and will not in the usual course be expected to simply 'clear up', it is important for the professional to mention this in the initial report – and to include an observation that there is no need for the child to be constantly **re-tested** every year to make sure that the disability is still present.

Be aware though that, in the case of **Year 12** final exams, some testing administration authorities will require **updated** reports (eg, 'not more than XXX months old') attesting to the fact that the disability is still operating to affect the child's exam performance and detailing exactly how (eg, supplying updated quantitative data re current reading speed/comprehension levels).

If such updated reports are being asked for, it is in the child's interests to provide them as they can only strengthen an application, fortify the applicant's submission that the recommended adjustments continue to be 'reasonable' for purposes of the Legislation, and thereby refute any defence of, "Well the disability doesn't seem to be there anymore."

5. Documenting the professional's recommendations:

5.1 Recommendations are best listed out in **bullet points** in the body of the report, rather than being encased in prose. Each should specify exactly whatever the professional, in consultation with the child, decides that this child with this disability and this level of impairment needs in order to attempt the exam on the same basis as a child without disability. Do not include recommendations for adjustments which the child has already said they are not comfortable with and won't wish to use (eg, wearing a brimmed hat to reduce glare).

5.2 Make sure that the professional's **recommendations** are **specific** and **clear**. For example:

- not simply '**extra time** for exams' but rather '15 minutes' extra time per hour' or '1.25 time' or 'time and a quarter', and an indication of how long an exam needs to be for the extra time adjustment to be required – depending on the nature of the disability, a child may not need extra time for a test of 30 minutes whereas they will for an exam of 3 hours;
- not simply '**rest breaks**' but clear instructions on length of breaks, who is to decide when the breaks are to be taken, whether and how the child needs to be reminded to take the breaks, where they are to go for them, what they are to be allowed to do during the time they are 'on break' (eg, eat, exercise, lie down), and exactly why the rest breaks are needed - eg, "*will allow the child to stretch, to perform the anxiety-reducing exercises which I have been*

teaching them; will allow the child to soak their hands in hot water to reduce pain in fingers” etc.;

- if a **medicine** has been prescribed and trialled but the child has been unable to take it for whatever reason (eg, intolerable side-effects, interference with another medicine prescribed for another condition), an observation as to the reason (so that the reader does not conclude, “Well, it you’re not going to take your medicine and help yourself, then why should we help you?”);
- if a **scribe** is being applied for on the grounds of a disorder of written expression, it is important to explain that the child’s difficulties with writing, spelling, grammar etc do not stem from an unwillingness to work hard to develop those skills, but rather are consistent with the well-recognised symptoms of that disorder;
- if use of a **computer** is being applied for but a scribe has been offered instead (although a scribe has not been applied for or professionally recommended or ever used by the child in the past), it will be important to include in any appeal submission some clear information about why the child would be unable to dictate to a scribe, and accordingly why a scribe would NOT address the child’s needs stemming from the disability, and why insisting on a scribe might indeed do more harm than good, for example:
 - if the child also has an anxiety disorder, the presence of a scribe might heighten the child’s anxiety, eg, ‘What will the scribe think of me; Will the scribe be judgemental if what I dictate sounds ‘stupid’; Will the scribe like me’ and all sorts of other irrelevancies which might preoccupy a child with an anxiety disorder but which would not bother others;
 - if the child also has an ASD diagnosis, the child may be unwilling to sit beside or interact with a stranger, but if the child chooses to instead sit opposite the scribe, the child will have to proofread his responses upside down (while no student without disability will have to do that);
 - if the child also has ADHD which is not able to be managed by a medicine, the child may have difficulty staying focussed on the content of what they are dictating, for example if they have to wait for a handwriting scribe to catch up. Being asked to repeat what they’ve said instead of continuing to think and dictate new material may cause some with ADHD to lose their train of thought;
 - if the child is unable to read cursive writing and can read only typing, then unless the scribe is typing, the child will be unable to proofread their work before handing it in, unless it is read back aloud, and ‘proofreading’ or editing text delivered orally is again a separate and sophisticated skill which would require learning and practice (while no child without disability will experience such a limitation);

- if the child has traditionally used a computer for all educational activities and tests and exams, to force the child to begin to use a scribe would add to their level of stress and anxiety. For example,

"The child would have to very quickly learn and apply a new and very different skill and approach to responding to a question, documenting and proofreading and editing their answers all at the same time. This would place the child at a distinct disadvantage vis-a-vis all other students who are able to use their normal well-established exam techniques and approaches. The child's consistent use of a computer over the last xxx years has been the result of careful assessment and analysis of their disabilities and educational needs by professionals and teachers who know them well. Access to a computer has always been recognised by the child's teachers as necessary for them to participate fully in day-to-day educational activities as well as all assessment tasks and exams. The child would be disadvantaged by being forced to adapt to a different type of adjustment at this point in the Year 12 trajectory without seriously jeopardising their grades and post school options."

5.3 If **extra time** is being recommended for tests and exams, ask the professional to consider inserting (if relevant):

The recommended extra time for tests will serve to remedy the current situation in which the child is being forced to leave questions unanswered, thereby losing marks despite actually knowing the correct answers.

5.4 If the child has **already been using** the recommended adjustments in the classroom and/or for in-school exams, it is important for the professional to highlight this in their report and specify how long and how regularly it has been happening. Such evidence will not necessarily set a precedent which a testing administration authority will automatically follow, but it may in some cases be persuasive.

5.5 As noted in Part 2 above, the professional is free to recommend whatever adjustments they feel the child needs. Adjustments are not tied to the specific disability which they are being recommended to address. It is not a case of selecting a disability adjustment from a pre-determined menu. There are no recognised or prescribed 'dyslexia adjustments' or 'autism adjustments' stipulated in the Legislation, and for State tests it is not the case that X is available only for Y, while Z is available only for Q.

It is rather a matter of asking how each applicant is affected by their disability in the exam context, and this will be a question of fact based on the evidence in each case. Two children with the same diagnosis may have very differing needs in an exam situation. They may require different adjustments or different levels of the same adjustment.

Accordingly, professionals are **not bound** by the lists of so-called 'allowable' adjustments which appear on the websites of some **testing administration authorities**. The latter constitute simply bureaucrats' self-authored, self-serving and capricious **policy** – but they are **not law** and may be (and often are...)

overridden by the recommendations of a professional who supplies cogent evidence in support.

However, if the adjustments which the professional wants to recommend can be easily fitted within the example adjustments listed on such websites, so much the better. For NAPLAN, some professionals in the past have had great success by tracking the exact wording in the 'scenarios' table which is posted on the ACARA website.

5.6 The professional should be encouraged to draft their report based on their diagnosis and their assessment of the level of impairment, in spite of the fact that a **school** may be strongly **objecting** that a testing administration authority will never be persuaded to amend its initial decision in response to your appeal. Many such schools have in the past been surprised at how 'easily' the initial rejection is reversed, once the proper evidence is submitted.

5.7 If the professional has an **article** from a peer-reviewed scholarly **journal** explaining why the disability adjustments which they are recommending would be particularly appropriate for a child with the disability which they have diagnosed, ask them to append it to their report.

6. The tone of the report:

Encourage the professional to use **words** such as 'essential' or 'imperative' or 'must', or 'strongly recommend', rather than anything nebulous such as 'advisable' or "the child would benefit from receiving...". The professional is recommending that to which the child is arguably entitled; the professional is not required to plead or beg.

The purpose of disability adjustments is chiefly to provide **practical** support to the child with disability in completing their schoolwork and sitting their exams, instead of the more generalised and lofty goals suggested by the following expressions which should be avoided: '...will level the playing field'; '...will overcome adversity'; '...will allow the child to reach or achieve or maximize or work to their full potential'; '...will help/assist the child'.

In particular, it is important that the professional **NOT** include anything about the disability adjustments enabling the child to do **better** as a result of having been granted them.

Gratuitous observations such as 'tries hard' or 'seems to be motivated' or 'seems to be well-intentioned' or 'is a lovely girl' are legally irrelevant and should be avoided. Just as the Legislation includes no exemption for children with a high IQ, so it includes no exemption for the seemingly lazy, unmotivated, disheartened or surly. Strongly discourage the professional or a school from including such vapid observations even if they appear at first glance to be compliments.

Similarly, **irrelevancies** such as "lives with his mother Mary and his father John and his siblings Sally and Fred" should not be included as they can have no influence on whether the adjustments will be approved, and they merely serve to

annoy the reader who is charged with reviewing many hundreds of similar application files, sometimes quite quickly and sometimes with very little training.

7. Clarifying the child's history:

It is important to include in the report an indication of:

- **how long** the professional has been assessing/treating the child and with what regularity (eg, once per week, month, term, year),
- what therapies and interventions have been implemented since what date and with what degree of progress or success, and
- when the disability was first diagnosed – either by the author or by a previous professional.

This will be important to later establish the [legally relevant] 'reasonableness' of the recommended adjustments – ie, that the professional's recommendations do not stem from a 10-minute chat with the parent in the absence of the child.

To make it clear that the child is **not** in any way **related** to the professional and that the parents are not in any relationship with the professional which could be seen as creating a conflict of interest, it is advisable for the professional's report to allude to how the professional first met the child: eg, *"... was first referred to me by their general practitioner in July 2008."*

It is wise also for the professional to specify that they met with the child and with the parent separately or on different days, again to negate suspicion of unwarranted parent influence during testing.

8. Qualifying the professional:

All the professional's degrees, **qualifications** and professional affiliations must appear somewhere on the letterhead or in the signature box. Some allied health professionals may also be willing to provide a very short (say 2-page) resume to attach to the report. Although medical and allied health professionals are usually forbidden by their ethical guidelines from blatantly promoting or marketing their practices and businesses, it is worth asking if the professional is prepared to include at least some mention of **how long** they have been treating children with issues, disorders, disabilities, etc the same as your child's.

What you are wanting to see somewhere in the report is something which implies that the author would make a formidable and **virtually unchallengeable expert witness** if the matter were to ever proceed to a hearing – something suggesting that the author is so well-credentialed and experienced that the other side would have trouble finding a barrister who is happy to cross-examine them, or an opposing expert witness who is well-credentialed enough to persuasively refute their evidence.

9. Collecting the reports:

Unless the reports are being sent to you as an attachment to an email, always ask the professional for **two paper originals** – one to forward and one to keep for

your master file as evidence for the future. Make sure that you personally go back and collect the two copies from the professional's office.

Never accept a professional's undertaking to send a report directly to a school or to a testing administration authority (because it may never go, or it may not find its way into the correct file, and you may never know). If you collect it yourself, you have a chance not only to make sure that it is actually delivered in time, but also to review it beforehand to check that it reflects what is needed. After forwarding one copy to the school or testing administration authority, be sure to confirm in writing that it has been received, that it has met the deadline for submission, and that it has found its way into the correct file.

10. Documenting disability adjustments for the NSW HSC:

In addition to all of the above, in NSW it is crucially important to remember that decisions with respect to disability adjustments for the HSC Year 12 final exams are made by NESAs not only on the basis of independent professionals' reports and recommendations, but also (and arguably even more importantly) on the basis of the reports and recommendations and observations of the child's current classroom **teachers**. In this respect:

- Make sure that you send in at the beginning of each year, starting in Year 7, a **one-page summary** of your child's strengths and weaknesses including a list of all the disability adjustments which have already been recommended by professionals and implemented in previous years. Send in one copy for each teacher and one for the Learning and Support Teacher, and then follow up with an email to ensure they have all received it and have read and understood it. This may prove to be important in Year 12 when one or some of those teachers may be asked to opine on the child's longstanding needs in the classroom and for tests.
- Make sure that the application is submitted to NESAs in **Term 4 of Year 11**, rather than waiting till Term 1 of Year 12. This will ensure that the teachers invited to provide the requisite reports about your child will have been teaching the child for some time and will be familiar with the child's disabilities and need for adjustments. If you wait till the beginning of Year 12, the teachers writing the reports may have just recently met the child and accordingly may not be qualified to express considered opinions on the child's need for disability adjustments. Further, even if they do provide supportive reports, their views may be regarded with suspicion on the grounds that they have not been teaching the child for long enough to have acquired the requisite insight into the child's needs.
- Encourage the **teachers** who are writing the **reports** (or perhaps filling in questionnaires) and the Learning and Support Teacher who is perhaps coordinating the process to prepare them in a forthright, unequivocal style. The reports must refer to the child's **disabilities** (not 'weaknesses' or 'issues' or 'difficulties' etc) and they must be explicit and detailed – not just, "Extra time will allow Timmy to do his best" but rather an assessment of exactly how the recommended adjustments will respond to the impairments

caused by the child's disability, and how the adjustments have already been supporting the child in that teacher's class and for how long, preferably:

- with specific reference to the exigencies of the very subject being taught by the authoring teacher, and
- with a description of what has happened on those occasions when the child has NOT for whatever reason had the previously approved adjustments in that teacher's class (eg, "*I have watched this child trying to write tests in my class without adjustments and this is what I have observed.*"), and a conclusion that the adjustments being applied for are accordingly necessary for the child for their final exams.
- The teacher's report should also contain an observation along the lines of, "*The adjustments being applied for will make a contribution towards allowing Timmy to attempt his exams on an equal footing with all the others in my class who do not have his disability. Being required to write his exams without the adjustments would **disadvantage** Timmy, and would prevent him for showing what he has learned and what he can do in a manner similar to that afforded to my other students without his disability.*"
- The comments in section 6 above with respect to the **tone** of professionals' reports apply equally to reports written by teachers.
- Applications to NESAs are now made not by parents but rather only by schools on downloadable forms available only to schools from the NESAs website. Make sure that the school retains a **copy** of all the completed forms and supporting documentation which is submitted to NESAs, and that the copy finds its way into the child's file. It's surprising how many schools forget or neglect to do this – or who later at appeal time claim that they have no copy of the original application, cannot access one and cannot recall what exactly was in it.

Worth printing out, annotating and taking to meetings:

Australia:

Disability Standards for Education 2005: <http://www.comlaw.gov.au/Details/F2005L00767>, <https://education.gov.au/disability-standards-education> and <http://resource.dse.theeducationinstitute.edu.au/content/discrimination>. The *Disability Standards for Education* operate as subordinate legislation under the Commonwealth **Disability Discrimination Act 1992** http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/ and <http://www.ddaedustandards.info/> which applies in all States and Territories and to all schools, public and private. You may hear the former referred to as the 'Ed Standards' and the latter as the 'enabling legislation'.

ACARA: <http://www.australiancurriculum.edu.au/StudentDiversity/Pdf/StudentDiversity> page 7

ICAS: <http://www.eaa.unsw.edu.au/> - not on website but send an email via the website and a disability adjustments table will be sent to you

NAPLAN <http://www.nap.edu.au/naplan/school-support/adjustments-for-students-with-disability/disability-adjustments-scenarios>

Part 6 here:

http://www.nap.edu.au/resources/NAPLAN_National_protocols_for_test_administration_2016.pdf

New South Wales:

DEC: <https://www.det.nsw.edu.au/media/downloads/about-us/how-we-operate/national-partnerships-program/every-student-every-school/learning-and-support.pdf> page 8

DEC Selective Schools and OC tests:

<https://education.nsw.gov.au/selective-high-schools-and-opportunity-classes>

HSC:

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

<http://ace.bos.nsw.edu.au/ace-10001>

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

Queensland:

EQ policies on gifted and on disability: <http://education.qld.gov.au/curriculum/framework/p-12/index.html>

Current Year 12 QCS policy (will change under new system):

<https://www.qcaa.qld.edu.au/senior/qcs-test/special-provision>

New system: <https://www.qcaa.qld.edu.au/senior/new-snr-assessment-te>

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Disclaimer: Information contained in this handout, and in the oral presentation for which it has been used, is not legal advice. Some material has been adapted and summarised to simplify the message. If in doubt, consult a legal practitioner with expertise in disability discrimination in education.

Disability Adjustments

