CARNARVON CHRISTIAN SCHOOL

"Walk as Children of Light"

Policy and Procedure Guidelines

DISABILITY DISCRIMINATION POLICY

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1 DISABILITY DISCRIMINATION POLICY

Disability discrimination is totally non-acceptable at Carnarvon Christian School CCS and we are committed to maintaining a non-discriminatory work environment. Disability discrimination is against the law.

As a Christian School, we live by the Golden Rule:
"So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets. Matthew 7:12

Galatians 3:28 further points out:
"There is neither Jew nor Greek, there is neither slave[a] nor free, there is no male and female, for you are all one in Christ Jesus."

CCS adheres to section 2 in the standards which states:

"A student with a disability is treated by the education provider 'on the same basis' as a student without a disability if the student has opportunities and choices, which are comparable with those offered to other students without disabilities, to enable:

- *Admission or enrolment in an institution; and*

Participation in courses or programs and use of facilities and services.

Carnarvon Christian School affirms the Disability Standards for Education 2005:

(a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and

(b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community; and

(c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

Students with a disability at CCS have:

- The rights given by Part 5 of the Standards are to give students with disabilities the right to participate in the courses or programs, and to use services and facilities, provided by an educational institution, on the same basis as students without disabilities, including the right to reasonable adjustments, where necessary, to ensure they are able to participate in education and training, on the same basis as students without disabilities.
- The rights given by Part 6 of the Standards are to give students with disabilities the right to participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs, on the same basis as students without disabilities.

2 AIM OF THE LEGISLATION

CCS notes that both State and Federal Acts apply and in the event of an inconsistency, the Federal Act will take precedence.

Both the Federal and Western Australian legislation prescribe:

- Grounds of discrimination covered by the legislation;
- Areas in which discrimination on those grounds may be unlawful (eg: employment, education, access to premises and/or vehicles, or provision of goods and services); and
- Exceptions, which may be either specific (ie: it relates to a particular area of unlawful discrimination), or general.

3 LEGISLATION FOR DISABILITY DISCRIMINATION

There is both Federal and State legislation that deals with disability discrimination. The relevant legislation is:

3.1 Federal

- Human Rights and Equal Opportunity Commission Act 1986
- Disability Discrimination Act 1992
- Workplace Relations Act 1996

3.2 State

- Equal Opportunity Act WA 1984
- Occupational Safety and Health Act 1997

(Refer to Appendix C)

4 WHAT IS DISABILITY (IMPAIRMENT) DISCRIMINATION?

Disability discrimination is when a person with a disability is treated less favourably than a person without the disability in the same or similar circumstances. The discrimination may be direct or indirect.

4.1 Indirect Disability Discrimination

Indirect discrimination is when there's a practice, policy or rule which applies to everyone in the same way, but it has a worse effect on some people than others which puts them at a disadvantage.

A requirement or condition could include policies, physical barriers, selection criteria, admission criteria or rules.

Example: David and all children at his primary school use the local public swimming pool for all swimming lessons. The only access into the pool is through a turnstile at the main entrance. David uses crutches or a wheelchair because of his disability and is unable to get through the turnstile.
David, and others who use wheelchairs or crutches, are discriminated against because of the physical barrier of the turnstile. Those without a disability would be able to get through he turnstile and it is not reasonable for David and others with similar needs to be excluded from the pool.

In some cases, a rule, requirement, condition or other treatment is considered reasonable depending on the circumstance. CCS staff would consider all possible alternatives before excluding the child.

4.2 Direct Discrimination

Direct discrimination occurs when a person treats a person less favourably than they would treat a person without a disability.

Example 1: Susan's class is going on a weekend camp. Susan has been told that she is not allowed to attend as she has diabetes and could require medication.
Susan has been treated less favourably than her classmates. She has been discriminated against because of the diabetes.

5 DESCRIMINATION

5.1 Discrimination in Employment

CCS will not discriminate against any person with a disability or impairment:

- in determining who should be offered employment or
- The terms and conditions of employment
- by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- by dismissing the employee; or
- by subjecting the employee to any other detriment

When Can a School Ask Questions Regarding a Person's Disability?

- To determine any reasonable adjustments required in order for the person to perform at work or in the classroom;
- To determine if the person can perform the inherent job requirements;
- To determine the requirements regarding insurance, workers' compensation and superannuation.

5.2 Discrimination in Education

Carnarvon Christian School has an open enrolment policy and does not discriminate against children with a disability or a disability of the other person's associates:

- by refusing or failing to accept the person's application for admission as a student; or
- *in the terms or conditions on which it is prepared to admit the person as a student.*
- *by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or*
- *by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or*
- *by subjecting the student to any other detriment.*

CCS will make any decisions about admission, enrolment or participation on the basis that reasonable adjustments will be made where necessary so that the student with a disability is treated on the same basis as a student without a disability.

Examples of **adjustments** include:

- making adjustments for sensory impairments (eg: a modified telephone for a person with a hearing impairment);
- removing physical barriers (eg: ramps for wheelchair access);
- giving information or training to other people about disability (eg: train teachers in dealing with students in their class who have autism or a medical condition

5.3 On The Same Basis, Reasonable Adjustment And Unjustifiable Hardship May Allow CCS To Refuse Enrolment

In the instance that enrolling a student should cause unjustifiable hardship or the inability to make reasonable adjustments then the student may be refused enrolment. Considerations of the whole Carnarvon Christian School community will help determine the impact any adjustments for a person with a disability will have. This includes:

- the advantages of the adjustments (ramps for wheelchair users can be useful for those with trolleys),
- the disadvantages of the adjustments (one less toilet for general use if one has to be modified for disabled use only),
- the effect of the disability (some students with spina bifida require minimal assistance, others require significantly more),
- the costs involved in making the adjustments which also takes into account the financial situation of the person (school) claiming unjustifiable hardship (eg: the relative costs to a school of installing wheelchair ramps, altering toilets, employing additional staff etc),
- the availability of funding to assist in making the adjustments,
- the impact on the students/employees.

APPENDIX A

Catholic Education Office v Clarke [2004]

The decision of the Full Bench of the Federal Court in the case of Catholic Education Office v Clarke [2004] FCAFC, 197 has highlighted the issues confronting service providers and particularly educational institutions, when providing services for disabled persons.

The case concerned a student who was born with profound congenital deafness. The student attended from 1992 to 1999 a primary school (operated by eh Catholic Education Office [CEO]) and like many other students at the primary school, planned to enter into a Catholic College at high school level. Throughout his time at primary school, the student had help from an Auslan teacher's aide and volunteers who interpreted the voiced words of the teachers and classmates. Funding was also provided for his year 4 and 5 teachers to undertake courses in Auslan.

When the student applied for a position at the high school in 1999, a series of meetings occurred between the parents and representatives of the CEO and College about his further education. In July 1999, the CEO and College developed a 'model of learning support' for the student to assist him in participating in, and receiving, classroom instruction. This model made it clear that the use of signing support would only be made available if a staff member were to have these skills and be in a position to input into the student's learning.

The student's parents, in a detailed letter, set out their view that the student required signing support so he could develop his English language skills and be able to participate fully in the core subjects at the College.

The parents of the student advised that they were prepared to make a grant to the school for the provision of a part-time teacher's aide who could provide signing support for the student. They also offered, amongst other things, to help to prepare any application for appropriate government grants and arrange for volunteers to provide support for the student.

In August 1999, an offer of enrolment was sent to the parents together with a proposed model of learning support. The model again only offered, in effect, teacher assistants trained in 'note-taking for students' and use of signing support, 'if a staff member were to have these skills and be in a position to input into the learning support program'.

The Court at first instance found that the assistance to be provided to the student would not include the provision of Auslan, and that instead the College required the student to rely on the use of note-taking as the primary communication tool to support him in the classroom The Court found that indirect discrimination was made out on the basis that an unreasonable condition had been imposed on the student for admission to the College.

When determining whether a requirement or condition is not reasonable, the Full Court summarised the principles as follows:

> The person aggrieved bears the onus of establishing that the condition of requirement is not reasonable in the circumstances.

The test of reasonableness is an objective one, which requires the Court to weigh the nature and extent of the discriminatory effect on the one hand, against the reasons advanced in favour of the condition or requirements on the other. Since the test is objective, the subjective preferences of the aggrieved person are not determinative, but may be relevant in assessing whether the requirement or condition is unreasonable.

The test of reasonableness is less demanding than one of necessity, but more demanding than a test of convenience. The question is not whether the decision to impose the requirement or condition is correct, but whether it has been shown that the decision is not objectively reasonable, having regard to the circumstances of the case.

The Court must weigh all relevant factors. While these may differ according to the circumstance of each case, they will usually include the reasons advanced in favour of the requirements or condition, the nature and effect of the requirement or condition, and the availability of alternative methods of achieving the alleged discriminator's objectives without recourse to the requirement of condition. However, the fact that there is a reasonable alternative that might accommodate the interests of the aggrieved person does not of itself establish that a requirement or condition is unreasonable.

In applying the principles to the facts, the following considerations contributed to the finding of the unreasonableness in not providing Auslan:

> The student was Auslan dependent and there was no prospect of him being able to communicate without Auslan, either quickly or without difficulty.
>
> In the absence of an Auslan interpreter, the student would not have received an effective education al all, although over time it may have been possible to reduce his dependency on an in-class interpreter.
>
> The terms and conditions of the offer of enrolment had not been modified by the College, and thus there was 'scant prospect' of the College actually providing Auslan support for the student.
>
> A sudden withdrawal of Auslan support would cause the student distress, confusion and frustration.
>
> An alternative was available that would have been acceptable to the student's parents and, in the light of the primary school experience, 'would have had no net ill effects'.
>
> While there would have been difficulties in finding Auslan interpreters, it was far from impossible to do so. In any event, the alternative provided for reversion to note-taking if interpreting assistance proved not to be available.
>
> Financial considerations did not play a major part in the equation. The reasonable possible equity concerns of the College were outweighed by the fact that the student was the only profoundly deaf student expected to attend the College in 2000.
>
> In the light of the assistance provided to the student at primary school and the parents' repeated and sincere offers of assistance, the College could have made provision for the student to be given Auslan support in the classroom.

The Full Court affirmed that indirect discrimination had occurred, and upheld the primary Judge's award of $20,000 in damages to the student, plus interest of $6,000.

The Full Court added an important message in its decision – that its determination does not mean that educational authorities risk being penalised for endeavouring to assist disabled children.

The decision nevertheless is a salutary reminder to educational authorities of their obligations under, and the intricacies of, the legislation which applies to disabled persons. Where a disabled student is to be admitted to, and provided services at, an educational establishment, care should be taken to ensure that the disability is appropriately supported in accordance with legal requirements.

The summary of this case was provided by Phillips Fox Lawyers.

Hills Grammar School v Human Rights & Equal Opportunity Commission and Mr & Mrs Finney

In 1997, Hills Grammar School, an independent school in Sydney, refused enrolment to Scarlett Finney, a six year-old girl with spina bifida. This school has quite a few children with disabilities, but when the registrar investigated Scarlett's needs by contacting the Spina

Bifida Association, an architect, the Department of Education and Association of Independent Schools, he was advised:

- It would cost $1 million to make the school wheelchair accessible.
- It would cost $2,500 each to train the teachers.
- A teacher assistant would be required at a cost of $30,000-$35,000 per year.
- The level of recurrent funding was not going to meet Scarlett's needs.
- Other nearby schools had appropriate facilities.

There were 100 applicants for the 44 positions in the Kindergarten.

The Principal sent a letter to Scarlett's parents:

"Thank you for your application for Scarlett to enrol at the Hills Grammar School in Kindergarten 1998.

An important factor in the consideration of each applicant is the nature of available resources. Following a thorough examination of Scarlett's special needs and the School's ability to meet them, we do not believe that we have adequate resources to look after her in the manner that she requires and in a way that is suitable for her. It is with great regret that we have reached this conclusion."

The parents complained to the Human Rights and Equal Opportunity Commission.
They said that:

- The school received $1.5 million in government funding, plus fees of $9,200 per child.
- Scarlett's disability was mild.
- She could walk short distances and use a wheelchair independently.
- Changes needed to buildings, toilets and the curriculum were minimal.

The case went before Commissioner Graeme Innes who found that:

- Kindergarten teachers were happy to teach Scarlett.
- Minimal training was needed for teachers.
- Scarlett could walk short distances.
- The school had 2 teacher assistants who could have been called if Scarlett needed to move long distances.
- Little curriculum modification was necessary because Scarlett did not have an intellectual disability.
- Minimal toilet modifications were needed.
- The school had grossly over-estimated the cost to building modifications because it had used the worst-case scenario. Only a few areas needed to be wheelchair accessible immediately.
- Mr & Mrs Finney had provided plenty of information about their daughter and offered for the school to meet all key medical or therapy staff involved in her support.
- The school had investigated the requirements of spina bifida in general, not the specific requirements of Scarlett Finney.
- Scarlett had been accepted by the Education Department school and had been successfully included with very little cost or difficulty.
- If the school had difficulty meeting costs, it could increase school fees by an amount that would constitute a very minor detriment to each individual or family.

The school was found to have discriminated against Scarlett Finney in circumstances where the exception of *'unjustifiable hardship´* was not established.

The school took the decision to the Supreme Court on review but the Honourable Justice Tamberlin upheld the Commissioner's decision.

Compensation was $42,628 and costs were awarded against the school.

The legal costs would have been sizable and the school received a lot of negative publicity across Australia.

Independent Schools were reminded of their obligations and the rights of students with disabilities.

APPENDIX B

WHERE TO GO FOR HELP

WA Equal Opportunity Commission
Level 2, 141 St George's Terrace
PERTH WA 6000
Phone: 08 9216 3900 or Country Callers 1800198149
Education Officer: 08 9216 3937
Website: http://www.eco.wa.gov.au
Email: eoc@eoc.wa.gov.au

Equal Opportunity Act 1984
Website: https://www.legislation.wa.gov.au/

Human Rights and Equal Opportunity Commission Act 1986
Website: https://humanrights.gov.au/
https://www.legislation.gov.au/
https://humanrights.gov.au/

Disability Discrimination Act 1992
Website: http://www.hreoc.gov.au
https://humanrights.gov.au/

Available under 'Disability Rights' heading on the front page.
Also available under 'Disability Rights' is a wide range of information on disability discrimination, including the rights and obligations of disabled people and employers and how to make a complaint.
The site also details a wide range of court decisions in the area of disability discrimination, including:

- Clarke v Catholic Education Office & Anor (2003): a child who is profoundly deaf was found to have been discriminated against as the school did not provide the Australian Sign Language (Auslan) interpreting assistance, but instead relied on note-taking as the main tool to support the student in the classroom.
- Purvis v State of NSW (2002): a child who exhibited anti-social and violent behaviour as a result of brain damage was found not to have been discriminated against by the school.
- Travers v State of NSW (2000): a student with spina bifida, including bowel and bladder problems, was discriminated against by a school as she was not provided access to the nearest disabled toilet.

FAIR and REASONABLE: Disability Discrimination Act Implementation Kit
Curriculum Corporation
PO Box 177
Carlton South VIC 3053
Phone: 03 9207 9600 or 1800 887 991
Fax: 03 9639 1616
Email: sales@curriculum.edu.au
Website: www.curriculum.edu.au
This kit is a self-paced kit for leaders in schools to assist in understanding and complying with the Disability Discrimination Act 1992 within the context of our School. The various worksheets include legislation, partnership with families, carers and school communities, mediation in special education, and management issues under the Act.
The kit is available for purchase through the above address, or is available on loan through the AISWA library.

Workplace Relations Act 1996
Website: http://www.workplace.gov.au

Occupational Safety and Health Act 1997
Website: http://www.slp.wa.gov.au

Special Education Consultants
Association Of Independent Schools of Western Australia (AISWA)
3/41 Walters Drive
OSBORNE PARK WA 6017
Phone: 08 9244 2788
The Special Education Consultant has a range of material available to schools, including:

- "Breaking New Ground: Employing People with Disabilities", an information kit containing material on developing the school's Equal Employment Opportunity Program, Resource Information, and Awareness Raising; and
- "Students with Disabilities – Enrolment Guidelines for Independent Schools", a resource folder put together by the Independent Schools Targeted Programs Authority Inc (SA), and includes an outline of the essential components of the DDA legislation for schools, a suggested enrolment process for students with disabilities, planning documents to support students with disabilities, and an overview of key Occupational, Health, Safety and Welfare issues.

APPENDIX C

DISABLILITY DISCRIMINSTION ACT 1992 AND EQUAL OPPORTUNITY ACT 1984.

Under the Federal legislation 'disability' is defined in Section 4 to mean:

a) total or partial loss of a person's bodily or mental functions; or

b) total or partial loss of a part of a 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 a 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 judgement 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; or

k) is imputed to a person.

Under the State Act, 'impairment' is defined in Section 4 to mean:

a) any defect or disturbance in the normal structure or functioning of a person's body;

b) any defect or disturbance in the normal structure or functioning of a person's brain; or

c) any illness or condition which impairs a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour, whether ***arising from a condition subsisting at birth or from an illness or injury, and includes an impairment***

d) which presently exists or existed in the past but has now ceased to exist; or

e) is imputed to the person.

Both are very wide definitions that will include people with learning, intellectual, physical and sensory disabilities, genetic conditions, mental and physical illnesses and also people with AIDS, HIV and ADHD.

Carnarvon Christian Parent Controlled School Association (Inc)

REVISIONS AND ADDENDA

Revision Date	Clauses Affected	Page Number	Operative Date
2014	Whole document review	Whole document	2014
2020	Amended whole document	Whole document	2020
2023	Whole document review	Whole document	2023
21/05/2024	Email address amended. Minor formatting changes.	Front cover page	2024