

EDUCATION STANDARDS

Your right to an education

A GUIDE FOR STUDENTS WITH A DISABILITY,
THEIR ASSOCIATES AND EDUCATION PROVIDERS

www.ddaedustandards.info



Australian Government
Department of Education, Employment
and Workplace Relations



National Disability Coordination Officer Program

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All listed partners accept no responsibility for the accuracy, completeness and currency of the information. If in doubt seek legal advice. A list of Community legal centres can be found in this booklet. Printed August 2008.

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About this booklet

The *Disability Discrimination Act (DDA) Education Standards* became federal law in August 2005. This booklet has been produced to provide information to students and their families about how the Standards may affect them. Further copies of this brochure may be downloaded from the website.

About the Website www.ddaedustandards.info

A website has been designed to help users understand important parts of the DDA Education Standards. Whether you are a person with a disability, an associate of a person with a disability, or a person involved in the delivery of education, this website will help you understand some important parts of the DDA Education Standards. It does not cover the full detail of the DDA Education Standards, just the more important parts of the Standards. The information is provided in three different ways:

> Plain English Text

> AUSLAN



> Audio format



If you feel you have been discriminated against because of your disability you are strongly advised to seek legal advice. A list of Community Legal Centres can be found in this booklet.

DISABILITY DISCRIMINATION LAW IN AUSTRALIA

Disability discrimination is where a person is treated unfairly or harassed because of their disability. The *Disability Discrimination Act (DDA)* makes discrimination on the grounds of a person's disability against the law, with some exceptions. The DDA applies everywhere in Australia and is looked after by the Australian Human Rights Commission (AHRC)

If you think you have been discriminated against or harassed because of your disability, you should contact a lawyer or community legal centre.

THE DISABILITY STANDARDS FOR EDUCATION

Disability Standards help us to understand disability discrimination law better by setting out in detail the rights of a person with a disability as protected by the DDA. There are Disability Standards for particular areas of life, including education.

The DDA Education Standards set out the rights of students with a disability in the area of education. They also set out the obligations that education providers, such as schools and universities, must meet in order to help students with a disability.

The main aim of the Education Standards is to give students with a disability the right to participate in educational programs on the same basis as students without a disability. This means having access to the same educational opportunities and choices as all other students.

If an education provider does not carry out its obligations to a person with a disability in line with the Education Standards, that person can make a formal complaint to AHRC.

WHO IS PROTECTED UNDER THE EDUCATION STANDARDS?

The Education Standards protect any person with a disability who is enrolled in or who has approached an education provider about enrolling in a pre-school, school, college, university, TAFE or any other organisation that educates or trains people.

The Standards also protect any person with a disability from discrimination by an education provider even if that person has left or has been expelled by the education provider.

WHO HAS OBLIGATIONS UNDER THE STANDARDS?

The Education Standards cover the following education providers:

- > **Preschools and kindergartens (but not childcare centres)**
- > **Public and private schools**
- > **Public education and training places, such as TAFE**
- > **Private education and training places, such as private business colleges**
- > **Universities**
- > **Organisations that prepare or run training and education programs**

WHAT ARE THE OBLIGATIONS?

The Education Standards put three main obligations on education providers.

1. **Obligation to consult**
2. **Obligation to make reasonable adjustments**
3. **Obligation to eliminate harassment and victimisation**

WHEN DO THE EDUCATION STANDARDS APPLY?

The Education Standards cover all stages of a person's time at school or in an education or training course, from the time they apply to enrol right up to the time they finish. The Education Standards make it against the law to discriminate against a person because of their disability at any of the following points in the education process:

- › **When an education provider is deciding what will be taught in a course**
- › **When a person is enrolling in school or a course**
- › **While a person is taking part in school or a course**
- › **If a person requires support services to take part in school or a course**
- › **When a person finishes school or a course**
- › **If a person is suspended or expelled from school or a course**
- › **If a person is harassed or victimised while taking part in school or a course**

- › **When an education provider is deciding what will be taught in a course**

Education providers must think about the needs of students with a disability when they are deciding what will be in a course and how they will teach it. They need to think about the types of adjustments or different ways of teaching that can help a student with a disability to achieve the main aims of a course.

- › **When a person is enrolling in school or a course**

Students with a disability should be able to enrol in a course or a school just like any other person. This includes requesting information or asking questions about enrolling. To do this they need to be able to access all course or enrolment information.

- › **While a person is taking part in school or a course**

This includes making sure that students with a disability have the same opportunities to participate in school or a course as other students. This may mean making adjustments to how the course is taught, what materials are used, and how students will be assessed.

- › **If a person requires support services to take part in school or a course**

Education providers must make sure that students with a disability can access and use support services that will help them participate at school or in an education course.



› **When a person finishes school or a course**

Education providers must make sure that students with a disability receive the same recognition for their learning and training outcomes as students without a disability.

› **If a person is suspended or expelled from school or a course**

The Education Standards apply to situations where an education provider makes a decision to expel or suspend a person from school or a course because of their disability. Education providers need to be very careful when they make decisions like this. You or your family or a support person should talk to a lawyer straight away if this happens to you.

› **If a person is harassed or victimised while taking part in school or a course**

The Education Standards say education providers must ensure that all staff and students are aware that there are rules against harassing or victimising a student with a disability or their associates. Harassment and victimisation of people is illegal and education providers must take all reasonable steps to prevent this happening.

CASE STUDY

TEACHING

David is a university student. He has a vision impairment. David needs his course materials printed in large print. On several occasions one of his teachers forgets to provide David with large print material. He also refuses to read the material out in class for David because he says it would take too much time. David complains to the head of the university. David, the teacher and the head of the university meet. The teacher agrees that he will do his best to ensure all material will be in large print for David before each class in the future. If this is not possible, David and the teacher agree to meet after those classes to make sure that David is clear on what material has been covered. The teacher also agrees to make the material available in large print as soon as possible after those classes.

CASE STUDY

HARASSMENT AND VICTIMISATION

Patrick has an intellectual disability. For a couple of months, a group of boys at his school called him names like 'Idiot' and 'Dumbo' in front of his class and his teacher. The teacher ignored what the boys were saying. Patrick was very hurt by what the boys were saying. He even asked the teacher to help him out, but the teacher said not to worry about it, and that it was a normal part of being at school. It was only after Patrick's parents had a meeting with the principal and the teacher that the situation was fixed. The teacher and principal agreed to discipline the boys and to notify all students and their parents about the seriousness of bullying. They also agreed to update their rules on harassment and bullying and to put a copy up on the school noticeboard.

EXCEPTIONS FOR EDUCATION PROVIDERS

When can an education provider refuse to carry out their obligations under the Education Standards?

Some kinds of discrimination are allowed by the Education Standards because the law allows some exceptions. Discrimination is allowed in the following situations:

- › Where an education provider cannot carry out their obligation because it would be too hard. This might be because carrying out the obligation would be very expensive or would create risks to people's safety. This exception is called **'unjustifiable hardship'**.
- › Where an education provider has to discriminate against a person with disability **to protect the health and welfare** of that person or other people.
- › **'Special Measures'** — Discrimination that helps or assists people with disability is not against the law. This is sometimes called positive discrimination. For example, a school that gets a grant for a program specifically designed to help students with an intellectual disability will not be discriminating if it refuses to provide the same funding for a person with a physical disability.
- › Where a **court makes an order** allowing discrimination or where there is **another law** that allows discrimination. There are not very many of these laws.

CONSULTING WITH YOUR EDUCATION PROVIDER

When deciding what to include in an educational course and how to teach it, an education provider should consult with each student with a disability doing the course and consider their needs. This consultation should begin as early as possible. It is important that where possible the student work with the education provider to find adjustments and solutions to help the student participate. When an education provider and a student with disability consult one another, they should try to cover at least these four points:

1. **Work out what the challenges, needs or barriers are for the student.**
2. **Suggest adjustments that could be made by the education provider to deal with these issues.**
3. **Discuss whether these adjustments are reasonable.**
4. **Ask the education provider to provide a letter about what was discussed and what decisions were made. Ask the education provider to give you a specific date when they will notify you about what adjustments will or will not be made.**

CASE STUDY

CONSULTING AND WORKING TOGETHER TO FIND ADJUSTMENTS AND SOLUTIONS TO HELP STUDENTS PARTICIPATE.

Kate and her daughter Fiona have moved to a country town. Fiona has an intellectual disability and sometimes has difficult behaviour, like yelling out in class. The country town has only one public school. When Kate tells the school about her daughter’s disability the principal refuses to accept Fiona’s enrolment as a student. Kate writes a letter to the principal telling her that she thinks this is unfair, especially when the principal won’t provide written reasons for the refusal. Kate says she will be making a complaint to HREOC if the principal doesn’t do something about it.

The principal organises a meeting with Kate and Fiona. During that meeting they discuss some of the challenges that Fiona’s disability might create in the classroom. The principal agrees to have a teacher with special training come and look at the school and make recommendations on how these challenges might be overcome by adjustments.

After these recommendations, Kate suggests to the principal that Fiona should be allowed to come to school on a three-month trial basis. The principal agrees. In the first few weeks there are many problems, and Fiona often refuses to stay in class, especially in English. After another meeting with Kate and Fiona, the principal agrees that a teacher’s aide could sit with Fiona in her English class to provide support.

With the help of the teacher’s aide Fiona is fine. Gradually, the time the teacher’s aide spends with Fiona is less and less, until they only have to meet once a week to talk about how Fiona is going. Fiona is accepted as a full-time student at the end of the three-month trial.



GLOSSARY

WORD	WHAT IT MEANS IN THE EDUCATION STANDARDS
Action Plan	A public statement made by an Education Provider to say what they are doing to make sure they do not discriminate. Action Plans are voluntary. An Education Provider writes them up and then gives them to AHRC to be made public through the HREOC website. AHRC reviews and approves the Action Plan before it is posted on the site.
Adjustment	Action that is taken to help a student with a disability take part in an education program on the same basis as other students. An Adjustment is Reasonable if it meets the needs of the student with a disability without impacting too much on the other people involved. (See also Reasonable Adjustment.)
Associate	Someone who is closely connected with a person with a disability. Associates may include family members and other relatives, carers, friends and people in a business relationship.
Disability Discrimination	A situation where a person is treated less favorably or harassed because of their disability and where no Exception applies.
Disability Standards	Standards that explain in detail what rights are protected under the DDA for people with a disability.
DDA	<i>Disability Discrimination Act 1992 (Commonwealth)</i> . The DDA applies everywhere in Australia and is looked after by the Human Rights and Equal Opportunity Commission (HREOC).
Education Provider	Any organisation that educates or trains people. Examples are: <ul style="list-style-type: none"> > Pre-schools and kindergartens (but not childcare centres) > Public and private schools > Public education and training places, such as TAFE institutes > Private education and training places, such as private business colleges > Universities > Organisations that prepare or run training and education programs
Education Standards	Standards that set out the Rights of students with a disability under the DDA in the area of education. They also set out the Obligations of the Education Providers such as schools and universities under the DDA to assist students with a disability in the area of education.
Exceptions	Situations where an Education Provider can discriminate against a student with a disability without breaking the law. Exceptions included in the Education Standards are: <ul style="list-style-type: none"> > Unjustifiable hardship > Protection of public health > Court orders or acts done under special laws > Special measures



GLOSSARY

WORD	WHAT IT MEANS IN THE EDUCATION STANDARDS
Harassment	Abusing, bullying or teasing someone because they have a disability in a way that makes that person upset, unhappy or scared.
AHRC	Australian Human Rights Commission. This organisation helps people with a disability when they make a complaint about an Education Provider that is not obeying the Education Standards.
Measures for Compliance	Things that Education Providers could do when trying to meet their Obligations. They are not legal requirements. An Education Provider may be able to meet its Obligations in a number of different ways that are not necessarily listed in the Measures for Compliance.
Obligations	Things that Education Providers must do to respect the rights of students with a disability. They are legal requirements and disobeying them is against the law, unless an Exception applies.
Prescribed Laws	Special laws that allow discrimination. The government has to identify these laws and make them public. Currently there are only a small number of such laws.
Reasonable Adjustments	An Adjustment is reasonable if it meets the needs of the student with a disability without impacting too much on other people. To determine if an Adjustment is reasonable, an Education Provider must consider: <ul style="list-style-type: none"> > The barriers, needs or challenges that face a student with a disability > The views of the student or their Associate > Whether an Adjustment will impact on the academic standards or requirements of the course > What advantages or disadvantages the Adjustments may create for the people affected by it > The costs of making the Adjustment
Rights	What a student with a disability can expect from an Education Provider. The most important Right is that a student with a disability has the opportunity to participate in education on the same basis as students without a disability.
Special Measures	Actions or services taken to assist or help people with a disability. These services will usually only be available to people with a disability and no other people. Special Measures are sometimes called positive discrimination.
Unjustifiable Hardship	An Exception that allows an Education Provider to refuse to make an Adjustment because the cost involved and the impact on the Education Provider and other people would be too great. The Education Provider must prove that an Adjustment would cause it Unjustifiable Hardship. To do this, the Education Provider must look at: <ul style="list-style-type: none"> > The benefits or disadvantages that would result from making the Reasonable Adjustment > The effect of the disability of the student in question > Its own financial position and the costs of making the Reasonable Adjustment
Victimisation	Threatening or hurting someone because they are thinking about making a Disability Discrimination complaint or if they have already made one. Victimisation is a crime.

LEGAL AND ADVOCACY SERVICES

Australian Human Rights Commission (AHRC)

Phone: 1300 656 419

TTY: 1800 620 241

Email: complaintsinfo@humanrights.gov.au

AUSTRALIAN CAPITAL TERRITORY

Welfare Rights and Legal Centre (Disability Discrimination Legal Service)

Phone: (02) 6247 2177

TTY: (02) 6247 2018

Email: wrlc@netspeed.com.au

PO Box 337 CIVIC SQUARE ACT 2608

NEW SOUTH WALES

NSW Disability Discrimination Legal Centre Inc

Phone: (02) 9310 7722

Toll free: 1800 800 708

Toll free TTY: 1800 644 409

Email: info@ddlcnsw.org.au

Website: www.ddlcnsw.org.au

PO Box 989 STRAWBERRY HILLS NSW 2012

Kingsford Legal Centre

Phone: (02) 9385 9566

TTY: (02) 9385 9572

Email: legal@unsw.edu.au

Law Building University of NSW NSW 2052

Intellectual Disability Rights Service (IDRS)

Phone: (02) 9318 0144

Toll free: 1800 666 611

Email: info@idrs.org.au

2C/199 Regent Street REDFERN NSW 2016

NORTHERN TERRITORY

Darwin Community Legal Service

Phone: 08 8982 1111

Fax: 08 8982 1112

Email: info@dcls.org.au

GPO Box 3180 DARWIN NT 0801

Disability Advocacy Service

Phone: (08) 8953 1422

Email: das@disabilityadvocacyserv.org.au

PO Box 826 ALICE SPRINGS NT 0871

QUEENSLAND**Cairns Community Legal Centre**

Phone: (07) 4031 7688

TTY: (07) 4031 7688

Toll free: 1800 650 197

PO Box 7129 CAIRNS QLD 4870**Welfare Rights Centre**

Phone: (07) 3847 5532

Fax: (07) 3421 2500

TTY: (07) 3847 5533

PO Box 97 STONES CORNER QLD 4120**SOUTH AUSTRALIA****Disability Advocacy and Complaints Service SA (DACSSA)**

Phone: (08) 8297 3500

Fax: (08) 8297 1155

TTY: (08) 8297 4144

Toll Free: 1800 088 325**470 Marion Rd PLYMPTON PARK SA 5038****Riverland Advocacy Service****Ph: (08) 8582 2422****Fax: (08) 8582 2411****2a Ahern St BERRI SA 5343****South East Disability Advocacy Service (SEDAS)****Ph: (08) 8273 6002****Fax: (08) 8725 8009****71 Sutton Town Rd MOUNT GAMBIER SA 5290****TASMANIA****Launceston Community Legal Centre**

Phone: (03) 6334 1577

TTY: (03) 6334 1949

Toll Free: 1800 066 019

PO Box 1582 LAUNCESTON TAS 7250**VICTORIA****Disability Discrimination Legal Service Inc.**

TTY: (03) 9654 6817

Fax: (03) 9639 7422

Toll free: 1300 882 872

Email: info@ddls.org.auWebsite: www.communitylaw.org.au/ddls/**Ross House 2nd Floor 247 – 251 Flinders Lane MELBOURNE VIC 3000****Villamanta Disability Rights Legal Service Inc.**

Phone: (03) 5229 2925

Toll free: 1800 014 111

Email: legal@villamanta.org.au**44 Bellarine Street GEELONG VIC 3220****WESTERN AUSTRALIA****Sussex Street Legal Centre (WA)**

Phone: (08) 6253 9500

Fax: (08) 9470 1805

Email: sscls@sscls.asn.au**Locked Bag 2 EAST VIC PARK WA 6981**

MAKING A COMPLAINT TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC)

If a person with a disability or an Associate of a person with a disability feels that they have been discriminated against because of their disability, they can make a complaint to the Australian Human Rights Commission (AHRC). Below is a brief description of the complaint process.

Seek information and assistance

Many complaints begin with a telephone call to AHRC. The first telephone conversation will usually help clarify whether or not a complaint is covered by the DDA. If it is covered, information will be given about the next step to take. Other organisations that may give more information and assistance with complaints are listed in this booklet.

Put the complaint in writing

If you decide to make a formal complaint, you need to put your complaint in writing. HREOC has complaint forms that can be filled in, which can be posted out to you, if you wish. Alternatively, the complaint can be made in a letter. A friend or support person can help with writing the complaint down, or a AHRC officer can help. Basically, the written complaint should provide contact details for all parties, report what happened, who was involved and, where possible, your preferred outcome to the complaint. It is a good idea, too, to list all the people or organisations that have been contacted about the complaint and to attach copies of any letters you've sent or received so far. AHRC's complaint handling process is free.

Assessing the complaint

Upon receiving the written complaint, AHRC will determine if the circumstances of the complaint are covered by the law. If they believe that they are not or they fall under some other area of law, AHRC will let you know that they can't accept the complaint. Sometimes, HREOC may ask you to give them more information about the circumstances of the complaint to help them make their assessment. Normally, AHRC will not consider complaints that have been lodged over 12 months after the time the discrimination happened unless there are special circumstances. Because of this, it's important to enquire about the complaint process as soon as you can after an act of discrimination happens.



Dealing with the complaint

Generally the process followed by AHRC is as follows:

- › AHRC will contact the person or organisation complained about to get their version of events and ask them some questions about what happened. The person or organisation will provide a written response, setting things out as they see them. Usually AHRC will then ask the person who has made the complaint if they would like to provide some written comments about that response.
- › AHRC will organise conciliation between the person making the complaint and the person or organisation they have complained about. Conciliation aims to help the parties agree on what should happen to resolve the complaint. All parties need to be realistic about the outcome and be prepared to compromise at times. Conciliation is free, and lawyers do not need to be involved. It's often good, though, to take a support person such as a family member or friend with you to the conciliation. The conciliation is run by trained conciliators, who don't take sides in the complaint and cannot make orders or give judgments.
- › Sometimes conciliation does not work, and there is no agreed outcome between the parties. When that happens, the person making the complaint has the option to take the complaint to court. However, this is a very big step, and anyone thinking about going down this path should talk to a lawyer first.

For more information on the complaints process with AHRC go to:

www.hreoc.gov.au/complaints_information/lodge

or contact the AHRC Complaints Info Hotline:

Phone: 1300 656 419

TTY: 1800 620 241

Email: complaintsinfo@humanrights.gov.au

www.ddaeducstandards.info

Full access to the official version of the DDA Education Standards is available at the website. Printed August 2008.