

Disability Discrimination and Education



DISABILITY STANDARDS FOR EDUCATION 2005

INTRODUCTION

Under the *Disability Discrimination Act 1992* (DDA), it is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any associates of that person. A person with a disability has a right to study at any educational institution in the same way as any other student.

The *Disability Standards for Education 2005* (the Standards), which came into force on 18 August 2005, set out the minimum requirements of education providers in relation to providing non-discriminatory access to education for people with disabilities. The Standards are an accompaniment to the DDA and set out in greater detail what education and training service providers must do in order to comply with the DDA and it also sets out the rights of people with disabilities in relation to education and training. The Standards address the issues of unjustifiable hardship in providing that equal access can be considered at *all* stages rather than only at enrolment and admission. They apply to all public and private educational institutions in all sectors: pre-school, primary and secondary schools, tertiary institutions such as TAFE, private colleges and universities, and adult and community education centres.

The Standards specify how education and training are to be made accessible to students with disabilities. They cover the following areas:

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Enrolment

- This includes refusing an application for admission or imposing detrimental terms and conditions on a person with a disability (such as higher fees).

Participation

- This may include the denial or limiting of access, for example, to common class rooms, lecture rooms or excursions.

Curriculum, student support services and harassment and victimisation

- Harassment and victimisation may prevail in the form of insults, derogatory comments and hostilities towards a person with a disability

What responsibilities are assigned to education providers under the Standards?

The DDA recognises that people with a disability may need to do something in a different way to achieve the same overall result. It therefore provides that an education or training service provider may be required, in some circumstances, to take into account and accommodate the needs of the person in relation to their disability and make a 'reasonable adjustment'.

What constitutes a 'reasonable adjustment' will depend on the circumstances of each individual case, but an example may be something as simple as allowing a student additional time to complete a test or exam, providing a sign language interpreter, making ramps, or supporting the use of assistive computer technology.

Education providers are not required to make adjustments for students with disabilities if making those adjustments would cause them significant difficulties or unreasonable costs. This is referred to as 'unjustifiable hardship'. In determining what constitutes 'unjustifiable hardship' education and training service providers are required to consult with the person directly involved. Various aspects of the student's disability and surrounding circumstances may be taken into account, as well as any direct or indirect costs and benefits that may ensue for both

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the student and the education provider. Examples of direct costs are costs associated with the hiring of additional staff or the provision of special resources, and indirect costs involve those costs that may have an adverse affect on the learning and social environment of other teachers and students. The benefits that are taken into account by education providers are those to do with the benefits arising to the student, other students and teachers from a positive learning and social environment and benefits to the education provider in the form of financial incentives, subsidies or grants as a result of the student's participation.

The DDA was ultimately created to help achieve a more level playing field.

Defences for education providers

The Standards also contain a provision which may be relied upon by education providers as an exemption from liability and to avoid an obligation under the Standards. That is, Part 10.4 permits educational authorities to '**isolate** or discriminate [students with disabilities] to protect the health and welfare of the student with a disability or the health and welfare of others'. This effectively reduces the legal rights and expectations of students with disability from their former position under the DDA.

The term 'isolate' is not defined within the Standards, and it is unclear under what circumstances and in what manner it may be applied. It may be sufficient for the education provider to show that the 'health and welfare' of 'others' or the health and welfare of the student with a disability makes it reasonably necessary to 'isolate' that student.

What happens if there is a breach of the Standards?

If a person considers that they have been aggrieved under the DDA, then they may make a complaint to the Human Rights and Equal Opportunity Commission. The Commission is required to investigate and attempt to conciliate the complaint. Where conciliation cannot take place, the Commission can terminate the complaint on the basis that it does not involve an unlawful act, that there is an alternative adequate remedy, that the complaint lacks substance, or that conciliation cannot be successful. Upon such termination the complainant has 28 days in which to seek a hearing, which will occur in a Federal Magistrate Court or a Federal Court of Australia.

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The Human Rights and Equal Opportunity Commission can be contacted and complaints lodged at www.hreoc.gov.au/.

SOURCES

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