



National Disability Coordination Officer Programme
AN AUSTRALIAN GOVERNMENT INITIATIVE

Your Right to an Education

A guide for educators and people with disability



ACKNOWLEDGEMENTS

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Disability Discrimination Act

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 disability, an associate of a person with 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.



EDUCATION STANDARDS

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 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 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 disability.

The main aim of the Education Standards is to give students with disability the right to participate in educational programs on the same basis as students without 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 disability in line with the Education Standards, that person can make a formal complain to the AHRC.

Who is Protected Under the Education Standards?

The Education Standards protect any person with 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 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 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 disability to achieve the main aims of a course.

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

Students with 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 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 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 disability receive the same recognition for their learning and training outcomes as students without 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 disability or their associates. Harassment and victimisation of people is illegal and education providers must take all reasonable steps to prevent this happening.



CASE STUDIES

Case Study One

Mary has Autism Spectrum Disorder. She needs an environment which is structured and where she knows what is going to happen in advance. She doesn't always understand social cues. One day when she arrives in class, the teacher announces there has been a change in plan and the first part of the class is going to be held in the gym-they are studying Physical Education. Mary accompanies the rest of her class to the gym. It is noisy, people all around her are yelling in support of their team. In the end it is too much for Mary and she leaves the gym, throwing her books down - accidentally hitting another student's foot. Mary is suspended.

At a meeting held with Mary, her advocate and the head of school, Mary explains that due to her disability, she finds it difficult to deal with unexpected changes, and loud noises. Mary also explains that when things become too much for her, she cannot always deal with them in a calm manner - the same way others might. The head of school promises that in the future any changes to the class routine will be given to Mary the day before, so she can prepare herself for what might happen, or even arrange for an alternative activity.



Case Study Two

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.

The "exceptions" in the Act needs to be balanced with each person's rights under the Act. If you are being told by an education provider that you cannot receive the support you need for any of the reasons above, it may be worth speaking with a lawyer to ensure that the reasons given to you are proper reasons.

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 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

Case Study Three

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 AHRC 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

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 AHRC 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 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 disability without impacting too much on the other people involved.
(See also Reasonable Adjustment.)

Associate - Someone who is closely connected with a person with disability. Associates may include family members and other relatives, carers, friends and people in a business relationship.

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.

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 disability.

DDA - Disability Discrimination Act 1992 (Commonwealth). The DDA applies everywhere in Australia and is looked after by the Australian Human Rights Commission (AHRC).

Education Provider - Any organisation that educates or trains people.
Examples are:

- 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 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 disability in the area of education.

Exceptions - Situations where an Education Provider can discriminate against a student with disability without breaking the law. Exceptions included in the Education Standards are:

- Unjustifiable hardship
- Protection of public health
- Court orders or acts done under special laws
- Special measures

Harassment - Abusing, bullying or teasing someone because they have a disability in a way that makes that person upset, unhappy or scared.

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 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 disability without impacting too much on other people. To determine if an Adjustment is Reasonable, an Education Provider must consider:

- The barriers, needs or challenges that face a student with 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 disability can expect from an Education Provider. The most important Right is that a student with disability has the opportunity to participate in education on the same basis as students without 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:

- 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.au
Website:
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 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. AHRC 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 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, AHRC 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.

AUSTRALIAN HUMAN RIGHTS COMMISSION

The Australian Human Rights Commission is an independent third party which investigates complaints about discrimination and breaches of human rights. For more information on the complaints process contact the

Australian Human Rights Commission

www.humanrights.gov.au

Phone: 1300 656 419

TTY: 1800 620 241

Email: complaintsinfo@humanrights.gov.au

USEFUL LINKS

Australian Disability Clearinghouse on Education and Training (ADCET)

ADCET aims to promote and contribute to inclusive teaching and support practices within the post-secondary education sector in order to facilitate successful outcomes and improve the educational experiences of students with disability.

<http://www.adcet.edu.au/>

Disability Standards for Education: A Practical Guide for Individuals, Families and Communities

This resource aims to increase awareness and understanding of the Disability Standards for Education among individuals, families and communities throughout Australia. This is a general resource about the rights of students with disability and how schools can work with students and their families to support them.

<http://resource.dse.theeducationinstitute.edu.au/>

National Disability Coordination Officer Program (NDCO)

The Australian Government's National Disability Coordination Officer (NDCO) Program works strategically to assist people with disability access and participate in tertiary education and subsequent employment, through a national network of regionally based NDCOs. Your regional NDCO may be able to assist you with enquiries related in good practice and training in educational inclusion.

To find your regional NDCO go to:

<http://education.gov.au/national-disability-coordination-officer-program>



National Disability Coordination Officer Programme
AN AUSTRALIAN GOVERNMENT INITIATIVE

How do I find an NDCO?

There are currently 31 NDCO regions throughout Australia. For more information about the NDCO Program, or to locate your local officer, please contact us at:

Telephone: 133 873

Email: ndco@education.gov.au

www.education.gov.au/ndcoprogram

