



## FACT SHEET #2

# DISABILITY STANDARDS FOR EDUCATION 2005

### Background

The Disability Standards for Education (the Standards) came into effect on 18 August 2005. The Standards seek to ensure that students with disability can access and participate in education on the same basis as other students.

On the same basis means that a student with disability must have opportunities and choices which are comparable with those offered to students without disability. This applies to:

- admission or enrolment in an institution
- participation in courses or programs
- use of facilities and services.

The Standards clarify the obligations of education and training providers, and the rights of people with disability, under the *Disability Discrimination Act 1992* (DDA). The Standards are subordinate legislation made under the DDA.

[Guidance Notes to the Standards](#) provide additional explanatory material, including background information and comments intended to help people interpret and comply with the Standards.

### What the Standards do

A primary objective of the Standards is to make rights and responsibilities in education and training easier to understand. The Standards cover enrolment, participation, curriculum development, accreditation and delivery, student support services and elimination of harassment and victimisation.

Each part of the Standards sets out the:

- rights of students with disability in relation to education and training to help people understand what is fair and reasonable under the Standards
- the legal obligations or responsibilities of education providers
- measures that may be implemented to comply with the requirements of the Standards.

All education providers are bound by the Standards: preschools and kindergartens, public and private schools, public and private education and training places and tertiary institutions including TAFEs and universities.

Under the Standards, education providers have three main types of obligations. They must:

- consult
- make reasonable adjustments
- eliminate harassment and victimisation.

## Consultation

Education providers must consult in order to understand the impact of a student's disability and to determine whether any adjustments or changes are needed to assist the student.

Although the Standards are not prescriptive about the process, consultation could include:

- talking with the student and their family members or carers, to get ideas about the type of assistance that is needed
- discussing ways to overcome the barriers and the adjustments that could be made by the education provider and whether these adjustments are reasonable
- providing any relevant medical and therapist reports that help to explain the disability and the needs and supports that can help
- providing written advice about the issues discussed during the consultation and the decisions made; including specifying a date for notifying the student about what adjustments will or will not be made
- meeting regularly to make sure all is going well and change supports if needed and keeping records of these meetings.

The obligation to consult continues for the whole time that the student is involved with the education provider.

## Reasonable adjustments

The Standards set out a process whereby education providers can meet the obligation to make reasonable adjustments where necessary.

An adjustment is a measure or action taken to assist a student with disability to participate in education and training on the same basis as other students.

An adjustment is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with disability, the education provider, staff and other students.

The process of consultation outlined is an integral part of ensuring that providers are meeting their obligations in relation to reasonable adjustments.

Education providers are required only to make reasonable adjustments. Schools can draw upon a broad range of resources to provide reasonable adjustments – including resources, materials and programs that may be in the form of targeted funding through a disability program, ongoing school funding or a redirection of general school resources to address the needs of students with disability. Other options include support through student services and allied health staff, specialist and targeted curriculum material and use of expertise within the school or network.

The Standards do not require changes to be made if this would impose **unjustifiable hardship** on the education provider.

All relevant circumstances are to be taken into account when assessing unjustifiable hardship including:

- benefit or detriment to any persons concerned
- disability of the person
- financial circumstances of the education provider.

Exceptions from the legal obligations in the Standards are set out in Part 10. In cases where a provider decides that an exception applies, it is the responsibility of the provider to demonstrate how the exception operates. However, the exception of unjustifiable hardship does not apply to harassment or victimisation.

## Eliminating discrimination

The Standards require that education providers develop and implement strategies to prevent harassment and victimisation of people with disability. Harassment in this case means an action taken in relation to people with disability that is reasonably likely to humiliate, offend, intimidate or distress the person. Harassment and victimisation of students with disability is unlawful and education providers must take all reasonable steps to prevent this from happening.

An education provider must take reasonable steps to ensure that staff and students are informed about:

- the obligation not to harass or victimise students with disability, or their associates
- the appropriate action to be taken if harassment or victimisation occurs
- complaint mechanisms available to a student who is harassed or victimised in relation to a disability of the student or of an associate of the student.

An education provider that has no strategy or program to prevent or remove harassment and victimisation, simply because it was not aware that these were occurring, is not likely to be able to establish a defence under the Standards or the DDA. Unjustifiable hardship is not available as a defence where a provider fails to comply with the Standards for harassment and victimisation.

### **Measures for compliance**

The Standards outline measures for compliance to provide examples of what can be done to meet the requirements of each part of the Standards. The measures are examples only and may not cover the needs of all students with disabilities, or all educational contexts. In these circumstances compliance with the Standards may require additional or alternative actions.

### **What happens if there is a breach?**

Under section 32 of the DDA it is unlawful for a person to contravene a Disability Standard. An aggrieved person or someone on their behalf can make a complaint to the Australian Human Rights Commission (AHRC) about non-compliance with the DDA. This includes complaints about non-compliance with a Disability Standard. If conciliation by the AHRC is unsuccessful, an aggrieved person may commence legal proceedings in the Federal Court or Federal Magistrates Court.

In addition, most states and territories have equal opportunity legislation. People who wish to lodge a complaint about discrimination can choose to complain under the Commonwealth's *Australian Human Rights Commission Act 1986* or the relevant state/territory legislation.

## **More information**

The [Department of Education website](#) includes copies of [the Standards and Guidance Notes \(www.education.gov.au/disability-standards-education\)](#). Information on rights and requirements under the Standards is provided in the following table.

**Table 1: Rights and Requirements under the Standards**

<p><b>Enrolment: Rights</b></p> <p>Right to seek admission and enrol on the same basis as prospective students without disability including the right to reasonable adjustments.</p>	<p><b>Enrolment: Requirements</b></p> <ul style="list-style-type: none"> <li>• Take reasonable steps to ensure that the enrolment process is accessible.</li> <li>• Consider students with disability in the same way as students without disability when deciding to offer a place.</li> <li>• Consult with the prospective students or their associates about the effect of the disability on their ability to seek enrolment; and any reasonable adjustments necessary.</li> </ul>
<p><b>Participation: Rights</b></p> <p>Right to access courses and programs; use services and facilities; and have reasonable adjustments, to ensure students with disability are able to participate in education and training on the same basis as students without disability.</p>	<p><b>Participation: Requirements</b></p> <ul style="list-style-type: none"> <li>• Take reasonable steps to ensure participation.</li> <li>• Consult with the student or their associate about the effect of the disability on their ability to participate.</li> <li>• Make a reasonable adjustment if necessary.</li> <li>• Repeating this process over time as necessary.</li> </ul>
<p><b>Curriculum development, accreditation and delivery: Rights</b></p> <p>Right to participate in courses and relevant supplementary programs that are designed to develop their skills, knowledge and understanding, on the same basis as students without disability and to have reasonable adjustments to ensure they are able to participate in education and training.</p>	<p><b>Curriculum development, accreditation and delivery: Requirements</b></p> <ul style="list-style-type: none"> <li>• Enable students with disability to participate in learning experiences (including assessment and certification).</li> <li>• Consult with the student or their associate.</li> <li>• Take into consideration whether the disability affects the student’s ability to participate in the learning experiences.</li> </ul>
<p><b>Student support services: Rights</b></p> <p>Right to access student support services provided by education institutions, on the same basis as students without disability. Students with disability have the right to specialised services needed to participate in the educational activities they are enrolled in.</p>	<p><b>Student support services: Requirements</b></p> <ul style="list-style-type: none"> <li>• Ensure that students with disability are able to use general support services.</li> <li>• Ensure that students have access to specialised support services.</li> <li>• Facilitate the provision of specialised support services.</li> </ul>
<p><b>Harassment and victimisation: Rights</b></p> <p>Right to education and training in an environment that is free from discrimination caused by harassment and victimisation on the basis of their disability.</p>	<p><b>Harassment and victimisation: Requirements</b></p> <ul style="list-style-type: none"> <li>• Implement strategies to prevent harassment or victimisation.</li> <li>• Take reasonable steps to ensure that staff and students are informed about their obligation not to harass or victimise students with disability.</li> <li>• Take appropriate action if harassment or victimisation occurs.</li> <li>• Ensure complaint mechanisms are available to students.</li> </ul>

