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Human Rights and Equal Opportunity Commission
Disability Standards for Education 2005
Commencement

• They were formulated under section 31 of the Disability Discrimination Act (‘DDA’).
Interaction with DDA

- Section 32 of the DDA provides that it is unlawful for a person to contravene a disability standard.
- Section 34 of the DDA provides that if a person acts in accordance with a disability standard Part 2 of the DDA does not apply to the person’s act.
  - The provisions relating to discrimination in education are located in Part 2 of the DDA.
Continued Application of State law

• The Education Standards are subordinate legislation made under the DDA.
• Currently the state law and the DDA operate concurrently in the area of education.
• The Standards do not change this position.
Guidance Notes

• Guidance Notes have been drafted to accompany the Standards and further notes exist throughout the Standards to explain various sections.
Objects of the Education Standards

- to eliminate, as far as possible, discrimination against persons on the ground of disability in the area of education and training; and
- 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
- 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.
Who must comply with the Standards?

- Preschools, including kindergartens
- Schools in the public sector
- Schools in the private sector
- State or Territory training authorities
- Public providers that deliver education and training
- Private training providers
Application

• Community based not for profit providers
• Industry skill centres
• Registered training organisations that have satisfied the national criteria for provision of services and have been registered by a state or territory training authority
Application

• Higher education providers
• Providers of adult community education
• Bodies whose purpose is the development and accreditation of curricula, training packages and courses used by education authorities, institutions or providers.
Areas covered

• Enrolment/Admission
• Participation
• Curriculum development, delivery, accreditation
• Student support services
• Harassment and victimisation
Responsibility of education provider: 1

- To take *reasonable steps* to ensure that the student is able to seek admission to, participate in or access support services *on the same basis* as a prospective student without a disability and without experiencing discrimination.
Responsibility of the education provider 2

• consult the student or an associate of the student about whether the disability affects the student’s ability to seek admission to courses, participate in courses or access support services; and

• in the light of consultation decide whether it is necessary to make an adjustment to ensure that the student is able to seek admission etc on the same basis as a student without a disability; and

• if an adjustment is necessary and can be identified in relation to the aim, to make a reasonable adjustment.
Measures for compliance

• Standards list measures that the education provider *may* implement.
Reasonable adjustment

Definition - Measure or action taken by an education provider that had the effect of assisting a student with a disability.
Reasonable adjustment

• In determining whether an adjustment is reasonable providers should consider:
  – The student’s disability;
  – The views of the student or their associate;
  – The effects of the adjustment on the student and others; and
  – Costs and benefits of making the adjustment.
Reasonable adjustment

• In assessing whether the adjustment sought is reasonable, the provider is entitled to maintain the academic requirements of the course or program or other components that are inherent or essential to its nature.

• No requirement on providers to make unreasonable adjustments.
Case Study – reasonable adjustment

Jacqui is in her final year of a teaching degree at university and has a mental illness. The assessment for her course requires that she complete a 20 day full time teaching practicum. Jacqui has requested that she be able to complete her practicum part time at the rate of 2 days on and 2 days off. The university has refused Jacqui’s request and indicated that if she doesn’t complete the practicum she will fail the course.
Case Study – Reasonable Adjustment

Tom is deaf and is about to commence high school. He was provided with an Auslan interpreter at primary school, but the high school advises that it will provide Tom with a range of options with a focus on note taking. Tom indicated that Auslan was his preferred method of communication. The school looked into providing an interpreter but decided that it would be too expensive.
Reasonable Adjustment

• Ruth has a vision impairment and is a University student studying Occupational Therapy. She can read large print. When she enrolled she asked for course materials in large print. The Uni provided all materials electronically and told her to convert to large print which took her hours each week to do. Much of the materials was diagrams which did not convert. The materials were provided well after the materials were available to other students.
Standards for eliminating harassment and victimisation

• Defines harassment
  – Harassment, in relation to a person with a disability, or a person who has an associate with a disability, includes an action taken in relation to that person’s disability that is reasonably likely, in all the circumstances, to humiliate offend, intimidate or distress the person
Standards for eliminating harassment and victimisation cont’d

• An education provider must develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability, or a student who has an associate with a disability.
Harassment

• The provider must take reasonable steps to ensure that its *staff* and *students* are informed about:
  – The obligation not to harass or victimise students with disabilities or students who have associates with disabilities; and
  – The appropriate action to be taken if harassment or victimisation occurs; and
  – 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.
Joshua has ADHD and has just started attending the local high school. He has good academic potential but he is bullied by other children and can react aggressively. He has been suspended because he got into a fight with another student whom he claims provoked him. Joshua’s parents claim that the school had failed to address the bullying, failed to provide any advice to Joshua about how to react appropriately to bullying, did not provide alternative punishment to suspension and didn’t provide him with homework whilst suspended.
Treatment of a person who has an associate with a disability

- Standards only apply to people with disabilities, not to associates of people with disabilities
Exceptions to the Standards

• It will not be unlawful for an education provider to fail to comply with the Standards if an exception applies.
• Provider has onus of making out exception.
Unjustifiable hardship

- Definition – in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:
  - The nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
  - The effect of the disability of a person concerned; and the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship;
  - Action Plan if one has been drafted.
Unjustifiable Hardship cont’d

• Guidance notes provide that unjustifiable hardship will apply to the process of making reasonable adjustment.
• The provider must comply with the Standards to the maximum extent not involving unjustifiable hardship
• Different though related concept to unreasonable adjustment
Case Study – Unjustifiable hardship

Andrew is 13 and has an intellectual disability, Autism and epilepsy. Andrew had frequent incidents of biting, kicking and hitting teachers and other students. Andrew was expelled following a violent incident with another child. The school had adopted a range of strategies to accommodate Andrew excluding isolation in a classroom which sometimes lasted for several weeks. Andrew’s mother complained about his expulsion and that Andrew has made no academic progress.
Case study – Unjustifiable Hardship

• Claire has spina bifida and seeks enrolment to her high school. She uses a wheelchair for long distances. She has some issues with bladder and bowel control as a result of her disability and requires that a nurse come to school once a day to catheterise her. Claire’s mother advises that she would need a cupboard in the toilets for catheterising equipment and that no mods to building required. School claimed that it could not accommodate Claire and refused to accept Claire’s application for enrolment.
Acts done under statutory authority

• Standards don’t render unlawful anything done in the circumstances described in section 47 of the DDA
Protection of Public Health

• Standards do not render it unlawful for an education provider to isolate, or discriminate against, a student with a disability if the disability is an infectious disease or other condition and it is reasonably necessary to so isolate or discriminate to protect the health and welfare of the student with a disability or the health and welfare of others.
Special measures

• Education providers can continue to provide special measures intended to specifically benefit students with disabilities.
5 year review

• After 5 years from the commencement of the Standards, the Ministers must conduct a review of the effectiveness of the Standards in achieving their outcomes including a consideration of whether any amendments are desirable; and

• Conduct further reviews at intervals of not more than 5 years
Overall effect of Standards?

• Better defines obligations of education providers.
• Minor consequential changes in the DDA.
• Doesn’t extend the scope of the law.
Use of Standards in handling complaints under state law

- Perhaps a useful guide to the parties as to their obligations
- Useful definitions.
- Seems likely will be persuasive to the various tribunals.
Key points

• The Standards are a result of extensive consultation between education providers and disability rights organisations.
• Better defines obligations that providers already had under the DDA.
• Places a clear obligation on education providers to consult with students or their associates about the student’s needs and to make reasonable adjustments which do not impose an unjustifiable hardship on the provider.
Further Info

- www.humanrights.gov.au

- For the Standard, the Guidance Notes and FAQ’s.