DISABILITY DISCRIMINATION ACT

Best Practice Guide

A Resource for Independent School Principals

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Introduction

This resource aims to assist school communities in their knowledge and understanding of the Disability Discrimination Act and the Disability Standards so that they may incorporate their obligations into their everyday practice and provide a high quality learning experience for every school student including those with a disability. This knowledge and application of the principles in the Disability Standards will also prepare individual teachers for accreditation under the National Teacher Standards.

In 2012 the Association of Independent Schools of South Australia developed a professional learning package aimed at improving schools’ understanding of their obligations in relation to the Disability Discrimination Act, 1992 and the Disability Standards for Education, 2005vi. This training was funded under the Department of Education, Employment and Workplace Relations under the "More Support for Students with Disabilities" Initiative.vii The training had two components.

1 A session delivered at the school during staff meetings so that a whole of school approach was implemented. The Disability Discrimination Act and the Disability Standards needed to be understood by all levels within the school, including leadership, teachers, support officers and administration staff.

2 The school leadership team had subsequent meetings with the consultant to review and discuss issues specifically relevant to their context. This included the examination of: policies (e.g. behaviour management and enrolment), consultation and documentation in the school (e.g. negotiated education plans and how students access the curriculum). Further support was then provided as needed in relation to specific issues.

Sessions took place over 2012 and 2013 and AISSA consultants continue to offer training and support to schools in 2014.

Students with Disabilities - School Policies

Policies relating to Admissions and Enrolment, Behaviour Management, Bullying and Harassment, Curriculum Development and Extracurricular Activities should all be consistent with the requirements of the legislation. School policies should be responsive to student diversity and incorporate inclusive values.

If your school has a policy or document that specifically identifies support for students with a disability then it is important to review the wording of such documents to ensure that the language is inclusive and appropriate.

One of the areas that must be addressed at a policy level is the ongoing training and development of all staff in the areas of student diversity, inclusive policies and the ability to deliver a flexible and differentiated curriculum. This includes staff in Out of School Hours Care programs and Boarding Houses.

Principals have a crucial role in developing inclusive schools that meet the needs of a diverse population of studentsviii. Research from the USA on inclusion demonstrates that inclusion works if the school principal wants it to work and communicates this to teachers.iv However, Konza (2008)v reported that teacher resistance is a major barrier to successful inclusion of students with a disability. One reason cited for this resistance is teachers’ perceived lack of competence when dealing with students with a disability. They do not believe they have the appropriate skills and in many cases are not interested in developing them. Other reasons include inadequate pre-service and professional development, large class sizes, insufficient curriculum resources and support, time demands, student behaviour, increased administrative demands, need for collaboration, undiagnosed students and parent concerns.
Much of this resistance can be overcome with training that can increase the competence and skill base of teachers and provide a nurturing environment for them. Leaders can facilitate this by introducing strategies such as linking research to practice, training teachers in the functional analysis of the learning environment and peer coaching. Changing attitudes, increasing knowledge and developing skills, assist teachers to better meet the needs of all learners.

At one of the DDA training sessions the presenter was approached by a teacher who acknowledged that she had been upset about her children having some children with disabilities in their class who disrupted learning time. She had been quite vocal about this and now realised the obligation the school had to include those students in the school community. This training had raised her awareness and had made her reflect on her own attitudes and beliefs in relation to students with a disability.

After many presentations teachers have approached presenters to discuss inclusion and embracing diversity in their classrooms.

**Enrolment**

This process of knowing your learner, consulting and documentation begins with enrolment.

A school cannot refuse enrolment on the basis of a student having a disability. Schools cannot place a limit on the number of enrolments they will accept for students with a disability.

If your school has an enrolment policy that specifies certain conditions for enrolment for all students then this would apply equally to a student with a disability who wishes to enrol. e.g. place on a waiting list, preference given to children with siblings at the school, Christian ethos of the school.

It is good practice to gather all information available about the student in order to meet their needs when they commence at your school. If parents are concerned that providing information about their child may affect a decision to enrol them then they may not be prepared to share professional reports or information about the child until enrolment has been confirmed.

As part of the admission process the Act requires schools to consider all reasonable adjustments that would be required to allow that student to attend the educational facility. However it does not require the school to accommodate a student if this requires more than a *reasonable* adjustment and this would cause undue hardship to the school. The AISSA Enrolment Guidelines and AISSA consultants can assist you in considering enrolment decisions.

Honest, nonjudgmental communication and consultation are the keys to successful enrolment and admission for a student with a disability. You should explain your school’s pedagogy and offer what it is reasonable to provide within your community.

However, discouraging enrolment by suggesting alternative options or implying that your school cannot best meet the student’s needs unless there is additional funding, can result in a parent complaint of discrimination. Likewise placing a condition on the student enrolling such as suggesting the parents pay for additional support would breach the Act.

If a student with an identified disability is enrolling in your school, this is when the process of full consultation with the parents, student and other professionals starts and documentation commences. It is important to start to consider whether adjustments may be necessary for the student to participate in the school on the same basis as other students without a disability. You then need to ensure that these adjustments are negotiated, documented and implemented within a reasonable time and with an appropriate review date scheduled.
Question

A principal asked if it would be a breach of the Act if a parent offered to pay for additional support for their child in the classroom and the school accepted this. In this situation as long as the student was going to receive the same level of support from the school’s budget that they would have received regardless of the parent’s offer then this would not breach the Act. However if as a result of the parent’s paid support the school provided less funding to support that child then this would be discriminatory.

Caution: If you accept an offer of additional support from a parent then it must be documented that should this no longer be available that the level of support will revert to the level of the reasonable adjustment previously negotiated.

Consultation and Reasonable Adjustments

The standards for Participation, Curriculum Development Accreditation and Delivery and Student Support Services all require the school to “know your learner”, “consult” and “make reasonable adjustments”.

Consultation always involves the parents, carers or associates of the student, the student themselves and others who have a significant knowledge and understanding of the student and their needs. This can include school staff and external professionals who know the learner. The aim of this consultation process is to identify any challenges or barriers that need to be considered that may impact on the student’s participation in the learning environment. Consultation is a regular and ongoing process and informs the decision making process concerning the need for reasonable adjustments, implementation of adjustments and changes to any adjustments that have been made. All consultation must be documented. Teachers should keep written records of any communication with the parents concerning the student.

Participation

Students with disabilities have the right to participate in the courses or programs and to use services and facilities, provided by an educational institution, on the same basis as students without a disability, including the right to reasonable adjustments where necessary.

Some adjustments require modifications to the physical resources of the school to ensure that the person with a disability is able to access the premises e.g. modifications to toilets, ramps and accessible classrooms. There may also be a requirement for the modification or provision of equipment for the student. Decisions concerning these adjustments occur at a school leadership level.

There are also adjustments that occur predominantly at a classroom or faculty level and the responsibility for these adjustments rest with classroom teachers. These include differentiating the curriculum to best meet the individual’s learning needs, changing course delivery, e.g. providing study notes or research materials in different formats or providing a sign language interpreter for a deaf person. There may be a need to change assessment procedures, e.g. allowing for alternative examination methods such as oral exams, or allowing additional time for someone else to scribe an exam for a person with a disability.

When an adjustment is made this is documented in a Student Learning Plan (SLP). These plans are the responsibility of the student’s teacher/s with input from the parents, the student, and members of the Learning Support team, and should incorporate recommendations from other professionals where available. In a setting where the student interacts with more than one teacher it is important that you have a system set up to ensure that all people working with the student are aware of the adjustments that have been negotiated.
Course activities must be sufficiently flexible for the student to be able to participate in all aspects of the curriculum and appropriate programs are provided to enable participation to be implemented, this includes any non-classroom based and extracurricular activities. It is also the responsibility of the school to ensure that additional support is provided where necessary to allow the student to achieve the intended learning outcomes. If the course, program or activity is one in which the student is unable to participate then the student must be offered a reasonable alternative within the context of the overall aims of the course or program.

Adjustments can include:

- No Adjustment
- Supplementary Adjustment
- Substantial Adjustment
- Extensive Adjustment

Details of the type of adjustment and examples of the typical student to whom such an adjustment may apply can be found in Appendix B.

**Part Time Attendance**

Some schools suggest that students with disabilities attend on a part time basis. It is compulsory for students from 6 to 16 years of age to attend school. However once a child is enrolled regardless of age then they are entitled to full-time attendance. Part-time enrolment results in a student being unable to fully participate in the school program.

A child with a diagnosis of mild Autism Spectrum Disorder has enrolled in Reception but finds it difficult to cope with the less structured part of the school day in the afternoon. The school has accepted enrolment but has suggested that he attends on a part-time basis to transition into the school. The parents have agreed to this arrangement, a review date has been set in place to gradually extend his attendance and participation.

This scenario is an example of an appropriate adjustment. However, part time enrolment with no plan in place to extend the time at school is discriminatory. Principals can approve a temporary part time exemption for four weeks and after this time a detailed application with a plan including reasonable adjustments that have been considered has to be made for the exemption which rests with the Chief Executive, Association of Independent Schools South Australia.

**Participation in Languages Other Than English**

Students with disabilities have a right to participate in programs for languages other than English. It is the responsibility of the school to ensure that the program is flexible enough for the student to achieve the intended educational outcomes that are negotiated with the student and the parents. These need to be documented and included in the student’s learning plan.

Is it discrimination to exclude or exempt a student with a severe auditory processing disorder or specific language impairment from studying a language other than English? If the student was excluded from the program on the basis of their disability this would be discrimination. However if the parents sought an exemption on the basis of the student’s disability, particularly if this is supported by an appropriate expert opinion this would not be discriminatory.
Curriculum Development and Accreditation and Delivery

This standard gives students with disabilities the right to participate in educational courses or programs that are designed to develop their skills, knowledge and understanding, including relevant supplementary programs, on the same basis as students without disabilities.

School leadership and individual teachers must take reasonable steps to ensure that the curriculum, teaching materials, and the assessment and certification requirements for the course or program are appropriate to the needs of the student and accessible. Delivery modes and learning activities must take account of intended educational outcomes and the learning capacities and needs of the student. The adjustment needs to be documented in the student’s learning plan with information about how the adjustment will be made and the review process to ensure that the plan continues to meet the student’s changing needs over time.

Adjustments at the curriculum level are the responsibility of the individual teacher. The Australian Professional Standards for Teachers Standard 1 – Know students and how they learn, requires all teachers to differentiate teaching to meet the specific needs of students across the full range of abilities. The Australian Curriculum Assessment and Reporting Authority has also published a paper entitled “Student Diversity and the Australian Curriculum, Advice for principals, schools and teachers (2013)”viii This paper outlines how the Australian Curriculum can be used to meet diverse learning needs. The related video is a demonstration of how to use the cross-curriculum priorities, general capabilities and the standards to map the curriculum.

Many teachers admit that they find differentiating the curriculum quite challenging particularly across the range of students with individual learning needs that they may have in their class or subject area. This is an area of ongoing training that is essential for teachers from the graduate level to the lead teacher level. This is also an area where peer coaching can be very successful. Providing differentiation in the area of curriculum content, delivery and assessment is good teaching practice and should be embedded in the curriculum development policy of the school.

During one of the DDA presentations a year level coordinator stated that the area of differentiating the curriculum for individual students was one which he struggled with. However on reflection he identified a staff member in the same faculty who appeared to do this naturally and realised that this was an area of peer coaching that they could develop within the faculty and across subject areas.

Making adjustments to assessments and reporting for students with a disability can also be a challenge for teachers; however the use of the Australian Curriculum Achievement Standards will assist in this process. In the case of students with a disability the school should negotiate the reporting arrangement with the student and their parent. There are a number of options depending on the level of adjustment that has been negotiated for the child’s curriculum goals in their individual learning plan.

External Assessment Requirements

In relation to assessment, only students who have an intellectual disability are exempt from the NAPLAN. If parents do not want their children to do the NAPLAN tests then this needs to be documented with a reason. In relation to SACE the new SACE is designed to be flexible enough for every student to participate and includes modified SACE subjects. The Policy for Special Provisions in Curriculum and Assessment provides details of the process for the application of special provisions for students.
Standards for Student Support Services

Students with disabilities have rights in relation to student support services provided by educational authorities and institutions, on the same basis as students without disabilities.

The standards also give students with disabilities rights in relation to specialised services needed for them to participate in the educational activities for which they are enrolled. These services include specialist expertise, personal educational support or support for personal and medical care, without which some students with disabilities would not be able to access education and training.

Most schools do not provide specialised services such as therapists or health services as part of the program available to the students. However, the school will meet their obligations under this standard if they develop strong processes to inform parents and the student about appropriate support services, liaise with external providers and agencies to ensure that the specialised support needs of the student are assessed and reasonable adjustments are implemented based on advice from external providers.

The school is not under an obligation to have a disability assessed or identified. However, where failure to undertake assessment which could reasonably have been undertaken leads to failure to make reasonable and necessary adjustments, this will lead to liability for unlawful discrimination. Schools need to ensure that any specialised equipment is provided for the student to be able to participate in the program or course. It is also essential that appropriately trained support staff are available to students with a disability so that they can participate on the same basis as students without a disability.

Harassment and Victimisation

This standard requires schools to develop strategies and programs to support the right of students with disabilities, their parents and/or carers, to education or training in an environment that is free from discrimination caused by harassment or victimisation on the basis of their disability. It also supports the right of students who have associates with disabilities to an educational environment free from discrimination, harassment or victimisation in relation to those disabilities. An educational provider cannot use the claim of unjustifiable hardship to exempt them from this obligation.

The standard does not deal directly with harassment by other students and in its wording only deals with harassment by staff. However, the Australian Human Rights Commission reports that there are a number of possible ways that the DDA may be relevant to this form of harassment. e.g. if as a result of harassment related to their disability a student performs poorly at school and is required to repeat a year then this could be interpreted as being subjected to a detriment by the school.

Where disability harassment by students is condoned by an educational authority, the authority may be regarded as responsible for subjecting the student to a detriment on the basis of disability and accordingly be liable.

Where disability harassment occurs and reasonable measures to prevent this have not been taken, the harassment (and lack of protection) may be found to constitute part of the "terms and conditions" on which students are admitted by the school and liability may arise accordingly. Liability on any of these bases will depend on the circumstances. These provisions and their application are yet to be tested.

Therefore it is prudent risk management to have policies, procedures and codes of conduct for staff and students explicitly prohibiting harassment and victimisation of students with disabilities, on the basis of disability. The school must provide professional development programs to staff to ensure that policies, procedures and codes of conduct, including matters of harassment and victimisation, are known and understood by staff, and that staff are trained to detect, and deal with, harassment. Complaints of harassment or victimisation on the basis of disability should be dealt with promptly.
and with due regard to the severity of the matter and the process for dealing with complaints needs to be transparent and accountable.

Cyberbullying is a significant issue in schools today. Students and sometimes parents are using social media or texting to harass or victimise others. If this occurs in relation to a student with a disability or their parents or associates and the school is aware that this is occurring then the school may be vicariously liable for this discriminatory behaviour if there have been no measures to prevent it. Policies on harassment and victimisation should include a code of conduct for students and parents in relation to social media and the use of mobile phones.

**Behaviour Management and Students with Disabilities**

The issue of managing students with behavioural difficulties was raised in a number of the presentations. Many students with disabilities can have behavioural difficulties that occur because of the nature of their disability or alternately arise out of frustration and an inability to communicate their feelings or needs. If a student with a disability is suspended or expelled because of challenging behaviour this may result in a complaint of discrimination on the basis of having received less favourable treatment on the grounds of the student’s disability compared to the treatment received by others without a disability “in circumstances that are the same or are not materially different” from those of the aggrieved person.xi

The following recommendations arise out of the case law when considering behaviour management with Students with a Disability:

- It is crucial for schools to have clear and precise behaviour management policies
- These policies must be applied flexibly and in full consultation with the parents and students when dealing with a student with a disability
- The policy should contain a clause stating that the school considers the individual circumstances of students when applying support and consequences
- A student with a disability should have an individualised behaviour management plan that has been negotiated with the student, parents, staff and outside experts and reviewed regularly
- Suspensions and expulsions should be a last resort
- Expert assistance should be sought to develop training, programs and strategies to assist the school to manage behaviour
- A “reasonably proportionate response” to the behaviour must be made after considering all the circumstances
- In deciding what is a reasonably proportionate response the duty of care to other students and teachers must be taken into account

Many schools have students who attend Out of School Hours Care or live in boarding houses. It is important that all staff in these facilities are given adequate training in the management of behavioural difficulties and are also part of the consultation process when a student has an individualised behaviour management plan negotiated.

If a student is prevented from attending OSHC or expelled from a boarding house for behavioural difficulties this could result in the student being unable to continue to attend the school because of family circumstances. In effect expulsion from the facility would result in removal from the school. If the school has not followed the same procedures as in the day school setting and the staff are inadequately trained to deal with the student’s behaviour this may result in a complaint.

Please remember that a change in a student’s behaviour may be an indication of a medical, social or emotional reaction to a change in their lives or circumstances and requires an appropriate notification and response.
Disability Discrimination Act 1992

**associate**, in relation to a person, includes:

(a) a spouse of the person; and

(b) another person who is living with the person on a genuine domestic basis; and

(c) a relative of the person; and

(d) a carer of the person; and

(e) another person who is in a business, sporting or recreational relationship with the person.

Australian Government, 1992 Disability Discrimination Act Office of Parliamentary Counsel, Canberra, viewed on 14 May 2014,

**Adjustments**

**No Adjustment**

Some students with disability, at particular stages during their time at school, may not require any personalised adjustments beyond the resources and services readily available in the school for all students.

This is particularly the case where as a result of good teaching practice the teacher has decided to incorporate a strategy into the classroom which adds value for all students and becomes “the usual way of doing things”. A good example of this is where a school has made a decision for all classrooms to have sound field systems, this benefits all students. However if there is a decision to make “no adjustment” this needs to be documented and communicated to the parents and student with the reasons why at this time you believe an adjustment is not necessary.

**Supplementary Adjustment**

Supplementary adjustments are provided when there is an assessed need at specific times to complement the strategies and resources already available (for all students) within the school. This may be an adjustment that only occurs in particular lessons or activities by offering the student additional support.

**Typical Adjustment:**

Adjustments to teaching and learning might include modified or tailored programs in some or many learning areas, modified instruction using a structured task analysis approach, the provision of course materials in accessible forms, separate supervision or extra time to complete assessment tasks, and the provision of intermittent specialist teacher support. Adjustments might include modifications to ensure full access to buildings and facilities specialised technology, programs or interventions to address the student’s social/emotional needs, and support or close supervision to participate in out-of-school activities or the playground. These adjustments may also include the provision of a support service that is provided by the education authority or sector, or that the school has sourced from an external agency.

**Typical students**

Students with disability and lower level additional support needs, access and participate in schooling on the same basis as students without disability through the provision of some personalised adjustments. Accessing the curriculum at the appropriate year level, (i.e. the outcomes and content of regular learning programs or courses), is often where students at this level have particular learning support needs. For example, many of these students will have particular difficulty acquiring new concepts and skills outside a highly structured environment. The needs of other students at this level may be related to their personal care, communication, safety, social interaction or mobility, or to physical access issues, any of which may limit their capacity to participate effectively in the full life of their mainstream school.

For example a student who has a physical difficulty with writing may be allowed to use a keyboard for written language activities. A student who has a specific learning disability may require additional small group or one on one support to acquire new skills.


Substantial Adjustment

Substantial adjustments are provided to address the specific nature and significant impact of the student’s disability, that impact on a student’s engagement, learning, participation and achievement.

Typical Adjustments

These adjustments are generally considerable in extent and may include frequent (teacher directed) individual instruction and regular direct support or close supervision in highly structured situations, to enable the student to participate in school activities. They may also include adjustments to delivery modes, significantly modified study materials, access to bridging programs, or adapted assessment procedures i.e. special provisions including the use of assistive technology or a scribe. Other adjustments may be the provision on a regular basis of additional supervision including beyond the classroom. These may be a regular visiting teacher or external agency support, frequent assistance with mobility and personal hygiene, access to a specialised support setting or alternative formats for assessment tasks.

Typical students:

Students with disability who have more substantial support needs generally access and participate in learning programs and school activities with the provision of essential measures and considerable adult assistance. Some students at this level require curriculum content at a different year level to their same age peers, while others will only acquire new concepts and skills, or access some of the outcomes and content of the regular learning program, courses or subjects, when significant curriculum adjustments are made to address their learning needs. Other students at this level might have limited capacity to communicate effectively, or need regular support with personal hygiene and movement around the school. These students may also have considerable, often associated support needs, relating to their personal care, safety, self-regulation or social interaction, which also impact significantly on their participation and learning.

An example may be a child with cerebral palsy who requires assistance with personal care and uses assistive technology to access the curriculum. A child with Autism Spectrum Disorder may require a differentiated curriculum in terms of teaching methods, study materials and assessment procedures, they may access the curriculum from a different year level to their same age peers. They may also require supervision and support to assist them in regulating their behaviour and learning social skills in an unstructured playground situation.

Extensive Adjustment

Extensive adjustments are provided when essential specific measures are required at all times to address the individual nature and acute impact of the student’s disability and the associated barriers to their learning and participation. These adjustments are highly individualised, comprehensive and ongoing.

Typical adjustments:

These adjustments will generally include personalised modifications to all courses and programs, school activities and assessment procedures, and intensive individual instruction, to ensure these students can demonstrate the development of skills and competencies and the achievement of learning outcomes. Other adjustments might be the provision of much more accessible and relevant curriculum options or learning activities specifically designated for the student. They may involve the use of highly specialised assistive technology, alternative communication modes, the provision of highly structured approaches or technical aids to meet
their particular learning needs, and some students may receive their education in highly specialised facilities.

**Typical Students**

Students with disability and very high support needs generally access and participate in education with the provision of extensive targeted measures and sustained levels of intensive support. The strengths, goals and learning needs of this small percentage of students are best addressed by highly individualised learning programs and courses using selected curriculum content tailored to their needs. Many students at this level will have been identified at a very young age and may have complex, associated support needs with their personal care and hygiene, medical conditions and mobility, and may also use an augmentative communication system. Students may also have particular support needs when presented with new concepts and skills and may be dependent on adult support to participate effectively in most aspects of their school program. Without highly intensive intervention, such as extensive support from specialist staff or constant and vigilant supervision, these students may not access or participate effectively in schooling.

An example of a student who requires an extensive adjustment may be a student with physical challenges that require a mealtime management plan and may use assistive technology for communication. In this instance the goals in the student’s learning plan may be highly differentiated and will usually require input from a number of external experts.
Resources

Burkhart, L & Porter, G. Writing IEP Goals and Objectives for Authentic Communication - for Children with Complex Communication Needs
http://www.lburkhart.com/Writing%20IEP%20Goals%201%20hr%205%2010.pdf

Burkhart, L & Porter, G Writing IEP Goals for Emergent Communicators
http://www.lburkhart.com/hand_ISAAC_B/IEP_goals_ISAAC_Barcelona_handout.pdf

Educational Support Matrix – Adjustments To support Student Learning and Achievement

On the Same Basis Implementing the Disability Discrimination Act Standards for Education


References

1 Disability Standards for Education 2005 (Cth)

2 More Support for Students with Disabilities
https://education.gov.au/more-support-students-disabilities


6 Nationally Consistent Collection of Data School Students with Disability
http://www.schooldisabilitydatapl.edu.au/

7 The Principal’s Guide to Exemptions

8 Student Diversity and the Australian Curriculum, Advice for principals, schools and teachers, January 2013
www.acara.edu.au

9 Australian Human Rights Commission Frequently asked questions – education

10 Resources available to Schools Regarding Students with a disability whose Behaviour is Problematic

11 Disability Discrimination Act 1992, Sub-section 5 (1)