DISABILITY DISCRIMINATION ACT

Your Legal Obligations

A Resource for Independent School Principals

July 2014
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Introduction

Inclusion of students with disabilities in mainstream education has been evolving since the mid 1970s. The aim is to provide an appropriate education for all students regardless of their needs, in the school of the parents’ and students’ choice. In order for this to occur the education system recognises that schools have the responsibility to provide appropriate facilities, resources and curriculum for every student. This goal of full inclusion is mandated by legislation in the form of the Disability Discrimination Act 1992.

This resource aims to highlight and reinforce sections of the Act and the Disability Standards that schools need to understand and comply with, in order to provide equality of access and opportunity for all students with a disability who wish to attend or already attend a school. There have been a number of questions raised by school communities during this training process and this document also aims to answer some of the more frequently asked questions.

Compliance with the obligations of the Disability Discrimination Act is a crucial area of accountability and risk management for schools.

You may be aware that the Australian Government and all state and territory governments have agreed to work towards the full implementation of a Nationally Consistent Collection of Data on School Students with Disability by 2015. This data collection aims to provide information to enable government to best target support and resources to assist all students with a disability to complete school and go on to further education or to find employment. The final report of the 2012 Trial of the Nationally Consistent Collections of Data on School Students with Disability stated that understanding of the concepts presented in the Act and the Standards was a critical factor in effective data collection because the model of data collection is grounded in the requirements and terminology of this legislation.

Excellent auditing, records management, documentation and communication are all essential to meeting your obligations under the Act and will assist in the process of accurate data collection.

In order to provide guidance to educators on how they could meet their obligations under the Disability Discrimination Act, the Disability Standards 2005 were developed to clarify the rights of students with a disability to access and participate in education and training. The Standards cover five main areas:

- Enrolment
- Participation
- Curriculum development, accreditation and delivery
- Student support services (note-takers, readers etc)
- Elimination of harassment and victimisation.

To further assist schools AISSA published the Students with Disabilities: Enrolment Guidelines for Independent Schools, 2006.

How Do You Meet Your Obligations Under the Act?

You have a duty of care to “know your learner”. It is important to remember that the definition of a disability under the Disability Discrimination Act is very broad and does not just include those students who are identified and receive additional funding under the Students with Disabilities Funding. The obligations under the Act also extend to the parents, carers or associates of the student with a disability.

The definition of disability under the DDA includes physical, intellectual, psychiatric, sensory, neurological and learning disabilities as well as bodily disfigurements and the presence of disease-causing organisms in the body. The definition includes past, present and future
disabilities as well as imputed disabilities and covers behaviour that is a symptom or manifestation of the disability.\footnote{iv}

This means as a school community you have an obligation to assist all students covered by the Act. You must ensure that there has been a process undertaken where any students who may fit the definition under the Act have been identified and appropriate consideration has been given to whether an adjustment is necessary to assist their participation in the full range of school programs and activities. You must also ensure that they have access to the curriculum, on the same basis as other students.

Students with Disabilities - School Policies

The development of school policies that take account of the requirements under the Disability Discrimination Act are crucial for meeting your legal obligations. Policies should be inclusive of all students and be detailed and transparent. There also needs to be a mechanism for review and an acknowledgment that there will be a consideration of individual circumstances when implementing and enforcing school policies.

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.

Section 2.2 of the Disability Standards for Education (2005)\footnote{v} states that “a person with a disability is able to seek admission to, or apply for enrolment in, an institution on the same basis as a prospective student without a disability if the person has opportunities and choice in admission or enrolment that are comparable with those offered to prospective students without disabilities.”

It is important that your enrolment policy and documentation do not imply that if a student has additional needs that the enrolment may be provisional or conditional upon certain conditions being met or information provided by the parents.

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

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 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”.

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Section 3.4 of the Disability Standards provides that an adjustment is **reasonable** in relation to a student with a disability if it balances the interests of all parties affected.

In determining whether an adjustment is reasonable the school should have regard to all of the relevant circumstances and interests including the:

- student’s disability
- views of the student or the student’s associates
- effect of the adjustment on the student including the effect on the student’s ability to achieve learning outcomes, participate in courses and programs and the effect on the student’s independence
- effect of the proposed adjustment on anyone else affected including the education provider, staff and other students
- costs and benefits of making the adjustment.

**Participation**

This standard gives students with disabilities the right to participate in the courses and programs of an educational institution and to use the services and facilities of the institution on the same basis as students without a disability and also gives them the right for reasonable adjustments to be made to ensure this can occur.

The process of deciding if an adjustment is necessary, and reasonable, takes place in full consultation with the parents and student. You must also consider if the adjustment can achieve the aim of ensuring that the student can participate on the same basis as students without a disability. In the process of deciding if an adjustment is reasonable you should take into account the learning needs of the student and balancing the interests of all parties affected. This includes the student with the disability, the parents, the school, staff and other students. There must also be a documented review process in place to allow for the changing needs of the student over time and to monitor the effectiveness of the adjustment.

**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.

You must consult with the student or the parent of the student about whether the disability will affect their ability to participate in the learning experiences of the course or program and if that is the case then decide if an adjustment is necessary to allow the student to participate in the learning experience on the same basis as a student without a disability. If an adjustment is necessary then a reasonable adjustment should be made to allow the student to participate and achieve the educational outcomes of the course or program.

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.

**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.

The education provider must take reasonable steps to:

- ensure that the student is able to use support services provided by the school in general on the same basis as a student without a disability
- ensure that the student has access to the service (but may arrange for it to be provided by another person or agency).
- facilitate the provision of the service to the student by another person or agency if specialised support is necessary and not available at the school.

**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 education 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
- **Conflict Resolution mechanism** available to a student who is harassed or victimised in relation to a disability of the student or of an associate of the student.

**Summary**

This is an exciting and challenging time for educational institutions in relation to meeting the needs of their diverse student populations. There are legal, social and moral obligations and expectations that need to be embedded into good teaching practice and pedagogy. The training that has been provided by AISSA has been designed to equip schools with the knowledge to meet these obligations and provide an inclusive educational environment.
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.

Disability Standards for Education 2005

2.2 Meaning of on the same basis

(1) A person with a disability is able to seek admission to, or apply for enrolment in, an institution on the same basis as a prospective student without a disability if the person has opportunities and choices in admission or enrolment that are comparable with those offered to other prospective students without disabilities.

Note This subsection is relevant to subsection 4.2 (1).

(2) An education provider treats a prospective student with a disability on the same basis as a prospective student without a disability if the provider makes any decisions about admission or enrolment on the basis that reasonable adjustments will be provided in accordance with section 5.2.

Note 1 This subsection is relevant to subsection 4.2 (2).

Note 2 An education provider that:

(a) refuses a prospective student with a disability a place in the institution, or in the particular course or program applied for by the prospective student, on the ground that the student would be able to enrol in another institution, or in a course or program at another institution; and

(b) does not refuse students without disabilities places on the same ground; does not treat a prospective student on the same basis as a prospective student without a disability.

(3) A person with a disability is able to participate in courses or programs provided by an educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability if the person has opportunities and choices in the courses or programs and in the use of the facilities and services that are comparable with those offered to other students without disabilities.

Note 1 This subsection is relevant to subsections 5.2 (1), 6.2 (1) and 7.2 (1).

Note 2 In some cases, students with disabilities will not be able to participate on the same basis as other students if all students are treated in the same way, or if all students with disabilities are treated in the same way.

Developing a Conflict Resolution Mechanism

Schools are encouraged to develop guidelines for resolving conflict and disputes that arise between students, staff and families. These guidelines should clearly explain the roles and responsibilities for key people and provide transparent information to students, parents, staff and the community. These guidelines should be reviewed regularly to ensure effectiveness.

Rationale

- Each school has a responsibility to ensure that high standards of conduct are maintained by learners, parents/caregivers and staff at all times
- Effective relationships that involve the whole school community provide the best educational opportunities
- Grievances will be managed and resolved fairly and effectively in accordance with school policies and procedures

Roles/Responsibilities of the School Community

All members of the school community have a responsibility to contribute positively by adhering to the conflict resolution procedures and allowing time for this process to occur. Typically there may be several steps to resolving an issue and clear communication and established trusting relationships can assist this to be successful. Support may be provided in a variety of ways including:

- Discussions with the person/people involved on another individual’s behalf
- Prompt investigation of concerns
- Monitoring the situation and timely follow up
- Thorough documentation processes
- The process of mediation
- Seeking other interventions/assistance

Procedures

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<th>STUDENTS with a grievance will:</th>
<th>PARENTS/FAMILIES with a grievance will:</th>
<th>STAFF &amp; VOLUNTEERS with a grievance will:</th>
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<td>• Speak to a teacher, SSO or staff member who can help</td>
<td>• Make an appointment with their child’s primary educator</td>
<td>• Talk to the person about the problem in a respectable manner and at a mutually appropriate time</td>
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<td>• Inform parents - Staff may also contact parents</td>
<td>• Speak only to staff, do not approach families or other children</td>
<td>• Seek to resolve it in a way that respects the needs of all those involved</td>
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<td>• If the issue continues to be unresolved seek help from another trusted person</td>
<td>• Seek to resolve the issue in a way that respects the needs of all those involved</td>
<td>• If a grievance continues to be unresolved, make an appointment with the principal or a member of the school leadership team</td>
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<td>• If still unresolved, make a time to speak with the principal or a member of the school leadership team</td>
<td>• If the issue continues to be unresolved, make an appointment with the principal or a member of the school leadership team</td>
<td>• If the family remains unsatisfied, seek a further appointment with the principal, in the presence of a mediator or third party (e.g. friend, interpreter or advocate)</td>
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<td>• Once resolved – make a positive connection or keep away</td>
<td></td>
<td>• Seek further support from an outside agencies such as a counselling service</td>
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References

1 Disability Discrimination Act 1992 (Cth)
3 Students with Disabilities: Enrolment Guidelines for Independent Schools 2006, Lythrum Press Adelaide
4 Disability Discrimination Act 1992 (Cth) Section 4
5 Disability Standards for Education 2005 (Cth) Section 2.2