



# Disability Standards for Education 2005



## Information for Parents and Primary Caregivers

### Australian Association of Special Education (AASE)

The Australian Association of Special Education (AASE) is a broad-based non-categorical association concerned with all who have special education needs.

AASE aims to:

- Advocate on behalf of people with special education needs to ensure provision of and access to quality education services
- Provide a range of quality services to members of the wider community

Any person interested in these aims may be interested in becoming a member of AASE. Members include parents / caregivers, teachers, therapists, community members, administrators and university lecturers.

For more information on the work of AASE please visit [www.aase.edu.au](http://www.aase.edu.au)

### AASE and the Disability Standards for Education 2005

AASE fully supports the development and implementation of the Disability Standards for Education 2005. The Standards provide a set of legal standards with which education and services providers must comply in order to meet their legal responsibilities under the Disability Discrimination Act (1992).

The application of the Standards is not optional. It is the law.

### Who is bound by the Standards?

Nearly everyone involved in any type of education is bound by the Standards. This includes:

- (a) Preschools, including kindergartens (but not child-care providers);
- (b) Schools in the public sector;
- (c) Schools registered through school registration authorities in the private sector;
- (d) Post-compulsory education and training authorities and providers;
- (e) Higher education providers
- (f) Providers of adult and community education
- (g) Bodies whose purpose is the development and accreditation of curricula, training packages or courses used by education authorities, institutions or providers

### Purpose of the Standards

The Standards are intended to give a student with a disability the same rights as other students. The Standards are based on the position that all students, including a student with a disability, should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment that values and encourages participation by all students, including a student with a disability.

### What aspects of education do the Standards apply to?

The Standards set out in detail how education and training is to be made accessible to a student with a disability. The Standards cover the following areas:

- Enrolment (part 4)
- Participation (part 5)
- Curriculum development, accreditation and delivery (part 6)
- Student support services (part 7)

The Standards also require education providers to develop policies and programs that eliminate harassment and victimisation.

### What do the Standards require?

- (a) *The Standards require a student with a disability to be treated "on the same basis" as all other students in the key areas of education outlined above.*

The concept of "on the same basis" is fundamental to the requirement for a provider not to discriminate against a student with a disability. An education provider treats a student with a disability "on the same basis" as a student without a disability if the student with a disability has opportunities and choices which are comparable with those offered to students without disabilities in relation to:

- Admission or enrolment in an institution
- Participation in courses and the use of facilities and services

Treatment "on the same basis" also includes the right to comparable access to services and facilities and the right to participate in education and training unimpeded by discrimination, including stereotyped beliefs about the abilities and choices of a student with a disability

- (b) The Standards also require education providers to make decisions about admission and enrolment on the basis that “reasonable adjustments” will be made, where necessary, so that the student with a disability is provided with opportunities and choices that are comparable with those available to students without disabilities.

In assessing whether a particular adjustment is “reasonable” for the student with a disability, the education provider should take into account:

- The nature of the student’s disability
- The information provided by or on behalf of the student about how the disability affects the student’s ability to participate
- Views of the student or an associate of the student about whether a proposed adjustment is reasonable and will enable the student with a disability to access and participate in education and training opportunities “on the same basis” as students without disabilities
- Information provided by or on behalf of the student about his or her preferred adjustments
- The effect of the proposed adjustments on the student, including the student’s ability to participate in courses or programs and achieve learning outcomes
- The effect of the proposed adjustment on anyone else affected, including the education provider, staff, and other students
- The costs and benefits of making the adjustment

**Examples of reasonable adjustments include:**

- Positioning a student in a classroom to maximise participation
- Adjustments to enable access to teaching and learning activities e.g. subtitled videos and DVDs, large print booklets or booklets in braille
- Adjustments to the time allocated to complete work
- Adjustments to the assessment process such as additional time, rest breaks, quieter conditions or the use of a reader and or scribe or specific technology
- Modifications to buildings and /or access areas
- Amendments to emergency evacuation procedures and plans taking into account the needs of a student with a disability
- An individual health care plan
- Staff training

Guidance on reasonable adjustments should be available from your education authority or your local AASE Chapter (see resources section at the end of this information sheet for local chapter website addresses)

**Complying with the Standards**

The Standards provide a set of measures to guide service providers in ensuring they comply with these requirements. These are outlined below in each of the key areas.

**Part 4 Enrolment**

Measures the education provider may implement to enable the prospective student to seek admission to, or apply for enrolment in, the institution on the same basis as a

prospective student without a disability include measures ensuring that:

- (a) Information about the enrolment processes:
- Addresses the needs of a student with a disability and;
  - Is accessible to the student and his or her associates; and
  - Is made available in a range of formats depending on the resources and purposes of the provider and within a reasonable time frame; and
- (b) Enrolment procedures are designed so that the student or an associate of the student, can complete them without undue difficulty; and
- (c) Information about entry requirements, the choice of courses or programs, progression through those courses or programs and the educational settings for those courses or programs is accessible to the student and his or her associates in a way that enables the student, or associates, to make informed choices.

**Part 5 Participation**

Measures that the education provider may implement to enable the student to participate in the course or program for which the student is enrolled and use the facilities and services provided by it “on the same basis” as a student without a disability, include measures ensuring that:

- (a) The course or program activities are sufficiently flexible for the student to be able to participate in them; and
- (b) The course or program requirements are reviewed, in the light of information provided by the student, or an associate of the student, to include activities in which the student is able to participate; and
- (c) Appropriate programs necessary to enable participation by the student are negotiated, agreed and implemented; and
- (d) Additional support is provided to the student where necessary to assist him or her to achieve intended learning outcomes; and
- (e) Where a course or program necessarily includes an activity in which the student cannot participate, the student is offered an activity that constitutes a reasonable substitute within the context of the overall aims of the course or program; and
- (f) Any activities that are not conducted in classrooms, and associated extra-curricular activities, or activities that are part of the broader educational program, are designed to include the student.

**Part 6 Curriculum development, accreditation and delivery**

Measures that the education provider may implement to enable the student with a disability to participate in the learning experiences (including the assessment and

certification requirements) of the course or program and any relevant supplementary course or program, on the same basis as a student without a disability, include measures ensuring that:

- (a) 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 to him or her: and
- (b) The course or program delivery modes and learning activities take account of intended educational outcomes and the learning capacities and needs of the student; and
- (c) The course or program study materials are made available in a format that is appropriate for the student and, where conversion of materials into alternative accessible formats is required, the student is not disadvantaged by the time taken for conversions; and
- (d) The teaching and delivery strategies for the course or program are adjusted to meet the learning needs of the student and address any disadvantage in the student's learning resulting from his or her disability, including through the provision of additional support, such as a bridging or enabling course, or the development of disability specific skills; and
- (e) Any activities that are not conducted in a classroom, such as field trips, industry site visits and work placements, or activities that are part of the broader course or educational programs of which the course or programs is a part, are designed to include the student; and
- (f) The assessment procedures and methodologies for the course or program are adapted to enable the student to demonstrate the knowledge, skills or competencies being assessed.

#### **Part 7 Support Services**

Measures that the education provider may implement to ensure that the student with a disability is able to access support services "on the same basis" as a student without a disability, and to ensure his or her access to specialised support services, include measures ensuring that:

- (a) Staff of education providers are aware of the specialised services available for the student and are provided with information that enables them to assist the student to access the services that the student needs: and
- (b) The provision of specialised services for the student, where necessary, is facilitated, including through collaborative arrangements with specialised service providers; and
- (c) Any necessary specialised equipment is provided to support the student in participating in the course or program; and
- (d) Appropriately trained support staff, such as specialist teachers, interpreters, note-takers and teachers' aides, are made available to a student with a disability.

#### **Part 8 Harassment and Victimisation**

Measures that the education provider may implement to enable the student with a disability to participate in education and training in an environment free from harassment and victimisation include measures ensuring that:

- (a) The provider's policies, procedures and codes of conduct for its staff and students explicitly prohibit harassment and victimisation of a student with a disability on the basis of disability including:
  - (i) The need for individual strategies and adjustments for a student: and
  - (ii) the need to use such supports as a wheelchair, hearing aid, breathing support, an interpreter, a reader, an assistant or carer or a guide or hearing dog or other appropriately trained animal; and
- (b) The policies, procedures and codes of conduct for staff and students explicitly prohibit harassment and victimisation of the associates of a student with a disability, on the basis of disability: and
- (c) The procedures for handling any cases or complaints or harassment and victimisation in relation to disability are fair, transparent and accountable: and
- (d) The provider's students and staff are effectively informed and reminded, at appropriate intervals, of their rights and responsibilities in maintaining an environment free from harassment and victimisation on the basis of disability

#### **Can an education provider seek exemption from the Standards?**

Yes, an education provider may seek exemption from the Standards. The Standards outline the circumstances under which exemptions may be sought. These include:

##### **(a) Unjustifiable Hardship**

In determining whether unjustifiable hardship applies, the Standards suggest an education provider should take into account;

- Information about the nature of the student's disability, his or her preferred adjustment, any adjustments that have been provided previously and any recommended or alternative adjustments. This information may be provided by the student with a disability, an associate of the student, or independent experts.
- Ensure that timely information is available to the student with a disability or an associate of the student about the processes for determining whether the proposed adjustment will cause unjustifiable hardship to the provider and;
- Ensure that these processes maintain the dignity, respect, privacy and confidentiality of the student and associates of the student, consistent with the rights of the rest of the community.

Where a claim of unjustifiable hardship is made, an education provider should take into account all the financial and other resources that are reasonably available for the purpose of making any necessary adjustments for the student and the impact of those adjustments on the providers to provide education of high quality to all students while remaining financially viable.

If the provider decides to reject an application for enrolment on the basis of unjustifiable hardship, it is good practice for the provider to ensure that a notice stating the decision and the reasons for the decision is given to the student or an associate of the student as soon as practical after the decision is made.

- (b) **Protection of Public Health**  
An education provider may claim exemption from the Standards 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.
- (c) **Special Measures**  
Education providers may seek exemption from the Standards if they wish to provide special measures intended specifically for the benefit of a student with a disability.

### **Do people have a right of appeal against a decision to seek exemption?**

Yes. Students and the parents / guardian have the right to appeal to the Human Rights and Equal Opportunity Commission (HREOC). The first step in any appeal will often be an attempt at conciliation. If that is unsuccessful the appeal will then proceed as a formal legal process.

The HREOC website ([www.hreoc.gov.au](http://www.hreoc.gov.au)) provides an excellent outline on the requirements of the Standards.

It also provides a number of examples of appeal cases that have been;

- Resolved through conciliation
- Resolved in favour of the appellant
- Resolved in favour of the educational institution

These case studies can be viewed at [www.hreoc.gov.au/disability\\_rights/decisions/decisions.html](http://www.hreoc.gov.au/disability_rights/decisions/decisions.html)

### **Issues for Parents / Primary Caregivers**

In researching this program, AASE identified a number of issues relevant for parents and primary caregivers which are outlined below.

#### ***Issue – Best Educational Outcome***

It is the responsibility of the parent / primary caregivers to seek the best educational outcome for their child. Educational outcomes are influenced by a range of factors including teaching programs, support services, school activities, policies and access.

#### ***Issue – Rights of a Students with a Disability***

A students with a disability has the right under the DDA to seek enrolment in the school that is considered most appropriate for their needs. It is the law.

The Standards are intended to give a student with a disability the same rights as other students. The Standards are based on the position that all students including a student with a disability should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment that values and encourages participation by all students including a student with a disability.

#### ***Issue – Who makes the decision on the most appropriate enrolment?***

The final decision on whether or not to accept enrolment or otherwise lies with the principal of the educational institution. Principals are strongly encouraged to consult with all key stakeholders in such a decision, including the student themselves, parents / primary caregivers, classroom teachers and other support staff.

#### ***Issue – “On the Same Basis”***

Schools are required to consider the application and participation of a student with a disability “on the same basis” as all other students. The Standards cover the areas of

- Enrolment (Part 4)
- Participation (Part 5)
- Curriculum (Part 6)
- Support Services (Part 7)

Schools are also required to develop processes and programs that ensure a student with a disability is not subject to discrimination.

#### ***Issue – Reasonable Adjustments***

Schools are required to make “Reasonable Adjustments” to meet the needs of a student with a disability.

The Standards require reasonable adjustments to be made in all key areas i.e. enrolment, participation, curriculum and support services. An adjustment is defined as a measure or action taken to assist a student with a disability participate in education and training on the same basis as other students.

An adjustment is considered 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 the disability, the education provider, staff and other students.

The need for adjustments and the nature of adjustments should be developed in consultation with the student with the disability.

Examples of reasonable adjustments were provided earlier in this information sheet.

### ***Issue - Consultation***

As mentioned above consultation is critical at all phases of the application of the Standards. It is important to keep the lines of communication open. Communication always needs to be transparent and negotiations need to be open.

### ***Issue – Support Services***

Schools may seek support for the development and delivery of programs for your child. Levels of funding and support vary from state to state. Support may be available for the school or individual teacher.

### ***Issue – Unjustifiable Hardship***

A school can decline your application for enrolment on the basis of “unjustifiable hardship”.

When a claim of unjustifiable hardship is made, the education provider is required to take into account all the financial and other resources that are reasonably available for the purpose of making any “reasonable adjustments” for the student with the disability and the impact of those adjustments on the providers capacity to provide education of the highest quality for all students, while remaining financially viable.

If a school is to rely on unjustifiable hardship, schools are encouraged to ensure a notice stating the decision and the reasons for the decision are given to the student with the disability and their associates as soon as practicable.

### ***Issue – Public Health***

Schools may also decline an application on the basis of the fact that accepting the enrolment could impact on public health through the potential transmission of an infectious disease.

If the school chose to decline an application on the basis of public health, they are required to inform the student and the parents / carer /other persons involved with the student.

### ***Issue – Appealing an Institutions Decision***

Students with a disability, parents, carers and other persons involved with the student can launch an appeal against the institutions claim of exemption from the requirements of the standard. This should be lodged with the Human Rights and Equal Opportunities Commission (HREOC).

HREOC tries to conciliate between the appealing parties in the first instance.

If an appeal goes before the Commission itself, both parties may seek legal support. The cost for this usually needs to be met by the different parties engaging the legal support. The Commission does not charge for hearing an appeal.

### **Want to know more?**

A wide variety of information is available on the Disability Standards for Education. Important websites include:

- [www.aase.edu.au](http://www.aase.edu.au)
- [www.hreoc.gov.au/disability\\_rights](http://www.hreoc.gov.au/disability_rights)
- [www.dest.gov.au/dsfe](http://www.dest.gov.au/dsfe)

Or Google ‘Disability Standards for Education 2005’ (search pages from Australia). This will also identify a range of resources on the Disability Standards.

The Education Manager may also be able to provide advice on the meaning of the Standards and how they apply to your child.