

REVIEW OF DISABILITY STANDARDS FOR EDUCATION 2005

SUBMISSION FORM

QUESTIONS FOR USERS OF EDUCATION AND TRAINING

In order to provide context for your comments please indicate whether you are a:

- Student/prospective student
- Carer or family member of student with disability
- Advocate
- Peak/community organisation
- Other _____

You may answer all or some of the questions.

SUBMISSION FROM PEOPLE WITH DISABILITIES WESTERN AUSTRALIA INC. (PWDWA)

ORGANISATION PROFILE

PWdWA is a Peak Disability Organisation providing advocacy and information services across Western Australia. Our main services involve Individual and Systemic Advocacy. PWdWA's Disability First Stop is a service that provides assistance to adults with a newly diagnosed disability who need to navigate their way through the disability sector. We encourage self-advocacy wherever possible.

PWdWA is funded by the Disability Services Commission (DSC) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).

PWdWA is committed to its mission:

“Empowering the voices of people with disabilities in Western Australia”

Further information can be found at <http://www.pwdwa.org>

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Please refer to the table below for the glossary of terms used in this document.

Commission	Australian Human Rights Commission http://www.humanrights.gov.au/disability_rights/education/education.html
DDA	Disability Discrimination Act 1992 http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264
Department	Department of Education, Employment and Workplace Relations http://www.deewr.gov.au
Discussion Paper	Review of the Disability Standards for Education 2005 Discussion Paper http://www.deewr.gov.au/Schooling/Programs/Pages/reviewdisabilitystandardsforeducation.aspx
HREOC	Australian Human Rights and Equal Opportunities Commission http://www.hreoc.gov.au
Parent	Parent, guardian or caregiver
PWdWA	People with Disabilities Western Australia Inc. http://www.pwdwa.org
Standards	Disability Standards for Education 2005 (with Guidance Notes) http://www.deewr.gov.au/Schooling/Programs/Pages/disabilitystandardsforeducation.aspx
Standards Website	Disability Discrimination Act: Education Standards Website http://www.ddaedustandards.info/index.php
Student	Current or prospective student

METHODOLOGY

This submission is based on a collation of information from the following sources:

1. PWdWA's Systemic Advocacy Database: including feedback from self-advocacy groups and publically available media releases and submissions.
2. PWdWA's Information Advocacy Database: including requests from the public for information on current services and resources.
3. PWdWA's Individual Advocacy Database: including information on individual cases relating to education issues.

In accordance with the Privacy Act 1988 and Disability Service Standard 4, the names of PWdWA clients and their education or service providers have not been disclosed in this submission. Note that PWdWA is not responsible for the names or content disclosed by external websites, publications or media releases that have been referred to in this document.

BACKGROUND

PWdWA's Annual Reports (2008-2010) show that the number of clients accessing Individual Advocacy for assistance with an education issue increased from 5% to 8%, as a proportion of the total number of issues addressed by the service (see:<http://www.pwdwa.org/content.aspx?cld=16>).

PWdWA's records show that clients seeking information or advocacy for an education issue, between 3rd December 2008 and 3rd March 2011, had a main primary diagnosis of:

- Autistic Spectrum Disorder;
- Intellectual Disability;
- Neurological Disability;
- Specific Learning Difficulty;
- Physical Disability;
- Psychiatric Disability; or
- Other Disability.

The main issues addressed included:

- meeting the eligibility criteria for educational support;
- lack of educational support staff / resources;
- advocacy through the complaints process;
- access to school transport;
- exam concessions;
- catchment issues;
- home schooling;
- post school options;
- financial assistance for further study;
- access to continued or full-time enrolment;
- alleged harassment / bullying from staff or other students;
- suspension of students with disabilities associated with challenging behaviours; and
- the breakdown in communication between education providers and students/parents.

QUESTION 1: PROVIDING CLARITY

Are the Standards easy to understand or are there parts that require clarification?

- Is the format of the Standards useful for understanding rights and requirements under each of the Standards?
- Are the terms used in the Standards clear to users and providers?
- Are there any parts of the Standards that need additional explanation or details of where to find additional information?

RECOMMENDATION 1.1: PROVIDING ALTERNATIVE FORMATS

In accordance with principles of universal design, PWdWA recommends that the Department produces the Standards, and associated materials, in a range of alternative formats.

PWdWA accessed the Standards via the Internet from the Department's schooling website, where the Standards are available in Rich Text Format (RTF) and Portable Document Format (PDF).

Alternative formats could include:

- an audio file of the Standards (e.g., MP3 / WAV);
- an Auslan (Australian Sign Language) video file of the Standards;
- an easy English version of the Standards (Example: Productivity Commission Disability Care and Support, Draft Report <http://www.pc.gov.au/projects/inquiry/disability-support/draft>);
- an HTML version of the Standards with:
 - a 'listen to this page' option (Example Website: Disability Services Commission <http://www.disability.wa.gov.au/index.html>);
 - a 'change background colour' option (Example Website: Dyslexia Adults Link <http://www.dyslexia-adults.com>);
 - a 'change font size' option (Example Website: People with Disabilities Western Australia <http://www.pwdwa.org>).

The main web page hosting the Standards could also include a contact number/email for accessing other alternative formats (e.g., hardcopy or Braille versions). This option was available for the Discussion Paper, but was not available on the Department's web page hosting the Standards.

RECOMMENDATION 1.2: OFFICIAL STANDARDS WEBSITE

PWdWA recommends that the Department designs a website that includes all the main documents associated with the Standards, with clear links to related information.

The Department's DDA Education Standards' Website is a good example of a website offering alternative formats and information to help users understand the Standards (see: <http://www.ddaedustandards.info/index.php>). PWdWA recommends that the Department establishes more direct links to the Standards Website, including links from other websites hosting the full version of the Standards and the DDA. The Standards Website could also include clear links to related policies such as the Disability Access to Premises Buildings Standards.

The Discussion Paper refers to a number of guides that have been developed by different departments to assist education providers in implementing the Standards, and users in understanding their rights under the Standards. PWdWA recommends that having one set of official documents that may be accessed from one location may help eliminate misinterpretation of the Standards. We also suggest that the Department produces a more comprehensive set of Guidance Notes, including separate documents for different audiences, such as users of education, advocates for people with disabilities, and the different education providers who must comply with the Standards.

PWdWA acknowledges that it would not be practical for the Department to produce guides that cover all types of disability. PWdWA recommends that Disability Service Providers wishing to produce their own resources relating to specific provisions or types of disability should have access to a Government Disability Standards Advisor who can verify that their resources accurately reflect the Standards. Electronic versions of these resources, produced by the Disability Service Providers, could then be linked to the Standards Website.

RECOMMENDATION 1.3: ACKNOWLEDGING RELATED LEGISLATION

PWdWA recommends that the Department provides a summary of the relevant differences between Federal, State and Territory discrimination laws relating to education rights and requirements, so that a person can make an informed decision about whether they should submit a complaint under the DDA or an alternative discrimination law.

The Standards Website provides one example illustrating the differences between state and federal discrimination acts, highlighting that “in New South Wales complaints cannot be made under the Anti-Discrimination Act 1977 (ADA) about private schools. The DDA on the other hand, lets you make a complaint about both private and public schools”. In addition, The Law and Justice Foundation of New South Wales notes that complaints made under the ADA have an upper compensation limit of \$40000, whereas complaints made under the DDA have no upper limit

(see:<http://www.lawfoundation.net.au/ljf/app/E096CEAE5D945D63CA25718E0006A4F6.html>).

QUESTION 2: RIGHTS UNDER THE STANDARDS

Are you aware of your rights to enrol, access support and participate in education and training?

- Are you aware that these rights are protected under the Disability Standards for Education 2005?
- Where did you find out about the Standards?

PWdWA accessed the Standards from the Department’s Schooling Website:

<http://www.deewr.gov.au/Schooling/Programs/Pages/disabilitystandardsforeducation.aspx>

We were referred to the Discussion Paper by the Australian Federation of Disability Organisations (AFDO). PWdWA is a State Member of AFDO.

RECOMMENDATION 2.1: RAISING AWARENESS - INTERNET ACCESS

PWdWA recommends that the Department improves the marketing of the Standards and includes a direct link to disability standards, services and programs on the Department’s home page.

At present, the Standards are located on the Department’s Schooling website. It is important that users and providers of education are able to easily access the Standards and related information. There is no reason why the document should be linked to the Schooling website as the Standards clearly cover a broad range of education providers.

Prior to contacting PWdWA, the majority of people seeking advocacy or information services for education issues did not indicate that they were aware that their rights were protected under the Standards. PWdWA employees have also expressed an interest in professional development in understanding the Standards. We would like to see improved marketing of the Standards to

users of education, providers and associated organisations (e.g., Advocacy Services and Community Legal Centres).

RECOMMENDATION 2.2: RAISING AWARENESS; REGIONAL, RURAL & REMOTE AREAS

PWdWA recommends that the Department takes into account the specific needs of students and education providers located in regional, rural and remote areas of Australia.

PWdWA recommends that the Standards take into account the specific challenges faced by students with disabilities attending courses in regional, rural or remote areas, and that the Department ensures that all students and education providers have access to the Standards. Specific challenges may relate to limited access to the internet and assistive equipment, and access to educational institutions with adequate support programs and services.

QUESTION 3: ACCESS TO EDUCATION AND TRAINING OPPORTUNITIES

Have you or a person you know with disability, experienced difficulties enrolling in an educational institution or participating in educational activities on the same basis as people without disability? If so, why do you think this occurred?

- Are the provisions for consultation and reasonable adjustment clear and adequate?

PWdWA supports the wording of the Standards but we are concerned how ‘reasonable adjustments’ and ‘unjustifiable hardships’ are assessed in practice. After unsuccessful attempts to resolve issues with education providers, several PWdWA clients have found that moving their child with a disability to a different school has helped eliminate discrimination. This implies that reasonable adjustments and unjustifiable hardship may differ from one institution to the next, with an ‘unjustifiable hardship’ for one institution, perceived as a ‘reasonable adjustment’ for another. These inconsistencies further indicate that eliminating discrimination in education goes beyond the application of the Standards, where intervening factors such as disability support funding need to be taken into consideration (see below for further information).

RECOMMENDATION 3.1:

EQUITABLE AVAILABILITY OF EQUIPMENT, PROGRAMS & SERVICES

PWdWA recommends that access to Government programs and services for students with disabilities should be based on the eligibility of the student and not the education provider.

Part 1.5 of the Standards state that both public and private educational institutions must comply with the Standards. However, private education providers are not required to have a Disability Access and Inclusion Plan and students attending private educational institutions do not have the same access to programs and services as students attending public institutions. Currently, students with disabilities attending private higher education institutions (Table B providers in the Higher Education Support Act 2003) are not eligible for funds through the Government's Higher Education Disability Support Program (see: <http://www.comlaw.gov.au/Details/C2005C00025>).

The Higher Education Disability Support Program includes three components:

1. Additional Support for Students with Disabilities (ASSD)
2. Performance-based Disability Support Funding
3. The Australian Disability Clearinghouse on Education and Training (ADCET)

(see: <http://www.deewr.gov.au/highereducation/programs/equity/hedisabilitySupportProgram/Pages/Home.aspx>)

The Standards state that people with disabilities should have the right to enrol and participate in education 'on the same basis' as people without disabilities. Unfortunately, the current system may lead to additional barriers for people with disabilities who wish to enrol in private education.

RECOMMENDATION 3.2: LEGISLATIVE RECOGNITION OF DYSLEXIA

PWdWA recommends that the Standards include, or refer to, a legislative definition of dyslexia.

The DDA and Standards acknowledge specific learning difficulties as "a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction". However, in practice, there appears to be some confusion regarding the eligibility of students with specific learning difficulties, such as dyslexia, in accessing disability support programs. In a recent WA State Budget Submission, the State School Teachers Union of WA stated that "students at educational risk are in many cases 'falling through the gaps', purely because their needs aren't formally recognised by the Schools Plus or other programs", highlighting the concerns of one parent who explained that "My daughter is dyslexic and we could not even get the public system to admit that she was. We have spent a lot of money over the last five years to get her additional help. There are lots of kids like her that will fall through the gaps that could easily be helped with quite a minimal outlay"

(see: http://www.puttingourkidsfirst.com.au/index.php?option=com_content&view=article&id=47&Itemid=63).

In January 2010, the Australian Dyslexia Working Party submitted a report commissioned by the Government to Hon Bill Shorten, entitled “Helping people with dyslexia: a national action agenda” (see: <http://www.adcet.edu.au/alda/view.aspx?id=6940>). The report included a set of recommendations “designed to improve both access and equity in the everyday lives of Australian children and adults currently struggling with this hidden disability”. Recommendation 2 of the report stated that “There should be legislative recognition at both State and Commonwealth level of dyslexia as a disability as determined under the Disability Discrimination Act (1992)”. PWdWA supports the Working Party’s recommendation and believes that the Standards can play a significant role in raising awareness of the needs of students with dyslexia and other specific learning difficulties, subsequently increasing the much needed availability of equipment and programs for these students.

Note that we have also made a submission to the Higher Education Base Funding Review (see: <http://www.deewr.gov.au/HigherEducation/Policy/Pages/BaseFundingReview.aspx>). Our submission indicates that in order to make reasonable adjustments for students with disabilities, there needs to be a match in the provision of funds for assistive equipment and services. The submission refers to the UK’s Disabled Students Allowance which provides guidelines to the level of funding that should be available to students with disabilities so that they may enrol and participate in education ‘on the same basis’ as other students.

QUESTION 4: ELIMINATING DISCRIMINATION

Describe any instances where the introduction of the Standards played a part in eliminating discrimination experienced by a person with disability in an educational setting?

- How could the Standards be improved to help prevent a person with disability from experiencing discrimination, harassment or victimisation in an educational setting? If possible please provide an example.

RECOMMENDATION 4: PROVIDING LINKS TO RELEVANT CASES

PWdWA recommends that court decisions made under the Standards are publically available, as this will assist people in understanding their rights under the Standards, and educational institutions in understanding their responsibilities.

PWdWA provides a non-legal advocacy service and will often refer clients seeking legal advice to the Australian Human Rights Commission or a Community Legal Centre. PWdWA staff and members keep up-to-date with policies, legislation and media releases in the area of disability discrimination.

We would like to refer to the recent case of *Mason v Methodist Ladies College* [2009] FMCA 570. In December 2010, the reported outcome of this case showed families with a child with a disability that the Standards can play a significant part in eliminating discrimination. Several media sources commented on the successful application of the DDA and Standards in this case, and we were able to access a preliminary report from the Magistrates Court through LexisNexis. Unfortunately, we were not able to access the final report from the Federal court with details of how the Standards were applied to this case, with one public blog website stating that “As the settlement is confidential, the lack of reported decisions under the Standards looks set to continue” (see: <http://thewellthoughtword.blogspot.com/2010/12/mason-v-methodist-ladies-college.html>).

The HREOC website provides a link to court decisions for discrimination cases relating to education issues (see: http://www.hreoc.gov.au/disability_rights/decisions/court/court.html#cted). PWdWA recommends that the Standards Website provides information of the outcomes of court proceedings or a link to the HREOC web page to assist people in understanding how the Standards work in practice. We recognise that not all cases result in a positive outcome for the student, and suggest that the Standards Website also includes a summary of court cases where the 'reasonable adjustments' made by an education provider have been viewed as sufficient, and where 'unjustifiable hardship' has been used as a defence.

QUESTION 5: AWARENESS AND RECOGNITION

Do you think the Standards have raised awareness and increased understanding of the issues affecting people with disability and their rights to access and participate in education and training?

- If so, can you provide examples?
- Are there issues that require more information or clarification so that there is greater awareness of the issues affecting people with disability in relation to education and training?

See previous comments and recommendations.

QUESTION 6: COMPATIBILITY WITH CURRENT EDUCATION SYSTEM

Are there any current education or training issues that are not covered by the Standards but should be?

- Are you aware of any educational institutions that are not covered by the list in Part 1.5 of the Standards?

PWdWA staff are not aware of any educational institutions that are not covered by the Standards.

7: OTHER COMMENTS

Is there anything else you would like to tell us about the Standards? For example are there any gaps that need to be addressed?

RECOMMENDATION 7: ADDRESSING THE RIGHTS OF PARENTS WITH DISABILITIES

PWdWA recommends that the Standards take into account the needs of parents with disabilities, irrespective of whether or not their child has a disability.

Several PWdWA clients and members are parents with disabilities who have dependent children without a disability. We are concerned that the rights of parents with disabilities are not accounted for in the Standards. PWdWA would like to refer the Department to a UK publication 'Disabled parents and schools: Barriers to parental involvement in children's education' (see:http://inclusivechoice.com/files/disabled_parents_and_schools_-_barriers_to_parenta.pdf). This publication highlights a range of barriers experienced by parents with disabilities in relation to their child's education. These barriers include finding out about schools, completing applications, accessing the school, school transport, involvement in their child's education, and access to the school community. The Standards should ensure that children who have a parent with a disability have the right to enrol and participate in education 'on the same basis' as other children, where reasonable adjustments may need to focus on the requirements of the parent rather than the student.

In conclusion, PWdWA would like to thank the Department for the opportunity to write this submission. PWdWA acknowledge that we have only addressed a small number of issues, with our main recommendations focused on:

- the marketing of the Standards and access to alternative formats;
- links to related cases and legislation;
- the improved availability of equipment, programs and services for all people with disabilities; and
- the rights of parents with disabilities under the Standards.

We look forward to reading other submissions published on the Department's website, and the final report from the review panel.

Mary-Anne Bath, PWdWA President

Andrew Jefferson, Executive Director

Dr Amber Arazi, Systemic Advocate