1. Disability Discrimination Act 1992

What is the Disability Discrimination Act?

The Disability Discrimination Act 1992 (DDA) is Commonwealth Government legislation, which can be used to address discrimination in many areas of public life. The objectives of the DDA are:

- to eliminate, as far as possible, discrimination against people on the grounds of disability
- to ensure that people with disabilities have the same rights before the law as the rest of the community
- to promote the principle that people with disabilities have the same rights as the rest of the community.

The DDA overrides all state and territory legislation.

Disability Standards are one of a number of strategies within the DDA to achieve its aims. Section 31 of the DDA provides for the formulation of Standards, which are subordinate legislation. The Standards aim to clarify legal obligations in a range of areas, e.g. education, access to premises, accessible public transport, communications and employment.

Refer to the next chapter for further information about the Disability Standards for Education.
Who is covered by the DDA?

The DDA has a very broad definition of disability that covers a wide range of disabilities, imputed (thought to have) disabilities and possible future disabilities.

The DDA also covers carers or associates (e.g. parents, grandparents) of people with disabilities who may experience discrimination as a result of their caring role or association with a person with a disability.

‘In Australia the right to belong is recognised in State and Federal anti-discrimination law. Our national commitment to human rights, formalised by the signing of various international instruments, requires that people who have a disability be recognised as full citizens and that our rights to equal participation in the life of the community be assured, along with all Australians’.


Disability Discrimination Act
Section 22: Education

In relation to education:

‘It is unlawful for an educational authority (see below) to discriminate against a student on the ground of the student’s disability or a disability of any of the student’s associates:

• by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority; or
• by expelling the student; or
• by subjecting the student to any other detriment’.

Specifically, in relation to enrolment:

‘It is unlawful for an educational authority to discriminate against a person on the ground of the person’s disability or a disability of any of the other person’s associates:

• by refusing or failing to accept the person’s application for admission as a student; or
• in the terms or conditions on which it is prepared to admit the person as a student’.
Important terminology in the DDA:

A number of terms used in the DDA are important to understand in order to provide equitable and non-discriminatory education for learners.

- An ‘educational authority’ means a body or person administering an educational institution’.
- An ‘educational institution’ means a school, college, university or other institution at which education or training is provided’.


Note that the DDA Standards for Education extend the DDA definition of an educational institution to include preschools and registered training organisations.

Disability

The definition of disability is broad and includes:

- physical
- intellectual
- psychiatric
- sensory
- neurological
- learning disabilities
- physical disfigurement
- the presence in the body of a disease-causing mechanism.

The term covers a disability that people:

- have now
- may have in the future (e.g. a family history of disability, which a person may also develop)
- are believed to have (e.g. if people think someone has HIV/AIDS).

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than a person without the disability would be treated in the same or similar circumstances.

Example

It would be direct disability discrimination if a learner with a disability was not allowed to participate in a sports day.

Discrimination issue

There is direct discrimination because the learner does not have the opportunity to participate on the same basis as other learners. The action to prevent any participation makes it direct discrimination.
How could direct discrimination be avoided?
The sports day could be planned so that there are events in which the learner can participate. This may require some accommodations/adjustments for the learner and some additional personal support.

Indirect discrimination

Indirect discrimination occurs in situations where a requirement is the same for all people, but in some way unreasonably disadvantages a person because they have a disability.

Example
It would be indirect disability discrimination if a teacher assessed the knowledge of a group of learners by requiring them all to write a report, even though one member of the group had a learning disability, which affected their ability to write effectively.

Discrimination issue
There is indirect discrimination because, while there is the same requirement for everybody, the person with a learning disability does not have the opportunity to participate in the assessment on the same basis as other learners.

How could indirect discrimination be avoided?
There are other ways to assess the knowledge of a learner. The section on ‘Accommodations/adjustments’ in chapter 6 ‘Disability Discrimination Act Standards for Curriculum Development, Accreditation and Delivery’ has a range of examples of alternative practices.

Access

Access refers to a learner being enrolled and attending at a site. It is affected by withdrawal from class, suspension and exclusion.


Participation

Participation refers to the way in which the learner engages with the learning activities. Participation is affected by such things as: the appropriateness of learning activities; the quality of teaching and the support provided; and the skills, interests and motivation of the learner.
### Activity 1

**Direct or indirect discrimination quiz**

Complete the following quiz and discuss in a group.

<table>
<thead>
<tr>
<th>Action</th>
<th>Example</th>
<th>Direct or Indirect Discrimination?</th>
</tr>
</thead>
</table>
| Refusing or discouraging a learner’s enrolment application             | 1. Saying: ‘There are no places at preschool,’ (when there are vacancies).  
2. Saying: ‘We already have a lot of learners with learning difficulties. The school down the road has a very good reputation with these learners.’ |                                     |
| Setting terms or conditions on which the site is prepared to admit the learner | 3. Saying to the parents/caregivers: ‘We need a volunteer to provide extra help — do you know anyone?’  
4. Saying: ‘If we get funding, your child can come here.’ |                                     |
| Denying or limiting the learner’s access to benefits provided          | 5. Not offering Languages (e.g. Italian or French) as the learner has difficulty with English.  
6. Telling the parents/caregivers that the learner cannot go on an excursion because the destination isn’t suitable. |                                     |
| Suspending and/or excluding a learner, whose disability impacts on her/his understanding of the school behaviour policy | 7. Suspending and/or excluding a learner for infringing the standard school behaviour guidelines or policy  
8. Allowing conditional re-entry, resulting in ongoing reduction in the number of lessons attended. |                                     |

*Answers are provided at the end of this chapter.*
Reasonable adjustments

These are changes and/or alterations to provide an equal opportunity in relation to access, participation and achievement for a learner with a disability. They also serve to eliminate discrimination as far as possible. Consideration needs to be given to:

- the learner’s disability
- the views of the learner or the learner’s associate
- the effect on the learner’s:
  - ability to achieve learning outcomes
  - ability to participate in programs
  - independence.
- the effect of the proposed adjustment on anyone else affected, e.g. staff and other learners
- the costs and benefits of making the adjustments.

Activity 2

There is often a diversity of learners with disabilities in preschools and schools. What are some of the reasonable adjustments that are/could be made for learners with disabilities:

1. Within your site?
   -
   -
   -
   -
   -
   -

2. Within your classroom/learning space/school yard?
   -
   -
   -
   -

There is information about the range of reasonable adjustments in chapter 6 ‘Disability Standards for Curriculum Development, Accreditation and Delivery’.
Activity 3

Read the following scenario and use the questions as a framework for discussion.

Jason is 10 years old and enjoys using the computer, playing with cars and looking at books about space. In the playground, he likes to use the swing and climbing equipment. He has autism, severe epilepsy and exhibits challenging behaviours characterised by hitting, biting and screaming. He has not yet attended school on a regular, full-time basis. His parents are finding it increasingly difficult to support Jason and want him to attend school full-time. The staff involved have refused to consider this. Using the Negotiated Education Planning process and with input from several disability support agency personnel, it has been eventually negotiated that Jason’s attendance at school will increase to full-time over 10 weeks.
When Jason does not have 1:1 support his teacher requires him to stay in a corner area of the classroom — this is not negotiated ‘down time’.

1. Identify the discriminatory actions — are they direct or indirect discrimination?
2. What reasonable adjustments need to be made?

Comments are at the end of this chapter.
For information about autism go to ‹http://www.autismsa.org.au/›.

Unjustifiable hardship

If the adjustments required to accommodate a person with a disability impose an unreasonable burden on the organisation, then it may be considered to be an unjustifiable hardship.

It is unlikely that a large public educational authority would be able to use this defence due to the nature of financial support available from the government.
However, each case must be judged on its individual circumstances.

It is important to remember that most adjustments within the public education sector will not be considered as an unjustifiable hardship.

Special measures

Section 45 of the DDA allows for the establishment of special programs/structures to provide equal opportunities for people with disabilities. Examples include: sporting teams for people with disabilities; or employment registers of people with disabilities. Such arrangements are called special measures.
Because of the possibility of having special measures, it is lawful to provide special learning programs to support learners with disabilities. The Department of Education and Children’s Services (DECS) provides the following options:

**Preschool special programs**
These include:
- The Preschool Support Program
- Speech and Language Programs
- Inclusive Preschool Programs
- Auslan Early Learning Program
- The Briars Special Early Learning Centre.

**Disabilities Support Program**
Additional support is provided to support learners with disabilities to work alongside learners without disabilities, in mainstream settings.

**Special classes**
These are located in some junior primary, primary and secondary schools. They provide a setting for learners with a disability who need extensive curriculum support.

**Special units**
These are located in some primary and secondary schools. They provide long-term educational options in a local school for learners with significant or multiple disabilities.

**Special schools**
These provide a structured learning environment, in a separate setting, for learners with significant or multiple disabilities.

**State-wide Transition Centres**
*(Daws Road Centre and Prospect Centre)*
Learners with disabilities, enrolled in a DECS school, may be able to participate in employment focussed programs at state-wide transition centres to support their transition to post school options.

Special measures cannot be made compulsory. Learners with a disability cannot be compelled to attend any one of these education options.
Harassment and victimisation

It is unlawful to harass or victimise a person with a disability, or any of their associates.

**Harassment** includes persistent behaviour that offends, humiliates, intimidates and creates a hostile environment. This could include such things as insensitive comments, inappropriate SMS messages, photographs, cartoons and inappropriate body language or T-shirt slogans.

**Victimisation** happens when someone has been treated unfairly for complaining or helping others to complain about an incident of discrimination or harassment.

See Chapter 8 for more information about harassment and victimisation.

**Further Information**


## Answers for Activity 1 — Direct or indirect discrimination quiz

<table>
<thead>
<tr>
<th>Example</th>
<th>Type of Discrimination</th>
<th>Points to Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Direct</td>
<td>There are vacancies — the learner is being refused enrolment because of their disability.</td>
</tr>
<tr>
<td>2</td>
<td>Indirect</td>
<td>Enrolment is not actually refused but is discouraged by suggesting alternative options as better able to meet the needs of the learner.</td>
</tr>
<tr>
<td>3</td>
<td>Direct</td>
<td>The inference is that the learner's needs can be met only if another person is there for support. This is a ‘condition’ to the enrolment. It is unlikely to be suggested if the learner did not have a disability.</td>
</tr>
<tr>
<td>4</td>
<td>Direct</td>
<td>The inference is that the learner's needs can be met only if extra funding is made available. Enrolment of learners with disabilities cannot be made contingent upon funding.</td>
</tr>
<tr>
<td>5</td>
<td>Indirect</td>
<td>Languages are a mandated part of the SACSA Framework. All learners, regardless of their ability, are entitled to access and participate in these classes. To suggest Languages are not a high priority due to ability with English, although not actually refusing the learner the opportunity to study languages, is indirect discrimination.</td>
</tr>
<tr>
<td>6</td>
<td>Direct</td>
<td>Planning for an excursion must include assessing the accessibility of the location for all learners, including those with disabilities.</td>
</tr>
<tr>
<td>7</td>
<td>Indirect</td>
<td>Behaviours associated with a disability may impact on the ability of learners with disabilities to comply with a site’s behaviour policy. Reasonable adjustments may need to be made.</td>
</tr>
<tr>
<td>8</td>
<td>Indirect</td>
<td>A learner’s attendance needs to be negotiated to meet the needs of the learner. All learners over the age of 6 and under the age of 16 are entitled to attend school full-time. An ongoing reduction in attendance requires special approval. (See Appendix 3 for further information.) If a temporary reduction in session times is not a strategy that would be used with learners without disabilities at re-entry meetings, the strategy is indirectly discriminating against a learner.</td>
</tr>
</tbody>
</table>
Comments on Activity 3

Discriminatory actions:

- The child is 10 years old and has not yet attended school full-time (see Appendix 3 for more information on part-time enrolment).
- There is an initial refusal of staff to consider the parents’ request for full-time attendance for their child.
- There is no planning or educational program provided when 1:1 support is not provided.

Reasonable adjustments:

- An educational program, e.g. peer support or negotiated ‘down time’, is provided when 1:1 support is not available.
- A positive behaviour strategy is implemented when 1:1 support is not available.
- An alternative program in the school is considered.
- Other educational options in the district are considered.
2. Disability Standards for Education 2005

Purpose of the Standards

The Standards:
- clarify legal obligations already in the existing Disability Discrimination Act 1992 (DDA)
- state the rights of learners with disabilities
- state the legal obligations of service providers.

The Standards specify how education and training are to be made accessible to learners with disabilities.

The five areas of the Standards

The Standards cover the following areas:
- enrolment
- participation
- curriculum development, accreditation and delivery
- student support services, and
- harassment and victimisation.

'The Standards are intended to give students with disabilities the same rights as other students. The Standards are based on the position that all students, including students with disabilities, 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 students with disabilities.

To achieve this, the effect of the Standards is to give students and prospective students with disabilities the right to education and training opportunities on the same basis as students without disabilities. This includes the right to comparable access, services and facilities, and the right to participate in education and training unimpeded by discrimination, including on the basis of stereotyped beliefs about the abilities and choices of students with disabilities'.

The Standards specify rights, obligations and measures

Each area of the Standards includes:

1. a statement of the rights or entitlements of learners with disabilities
2. a description of the legal obligations or responsibilities of educational providers
3. a description of the measures which, if implemented, will be evidence of compliance with the legal obligation.

A copy of the Standards is included as Appendix 1.

<table>
<thead>
<tr>
<th>Key Terms</th>
<th>Purpose</th>
</tr>
</thead>
</table>
| Rights    | To assist people to understand and comply with the Standards set out in the obligation provisions  
  – *What’s fair and reasonable* |
| Obligations | To describe the responsibilities of education providers  
  – *What you have to do* |
| Measures  | To provide examples of performance based compliant actions  
  – *What could be done* |

The Standards clarify and extend the DDA

The *Disability Discrimination Act* deals in broad terms with what is required of education providers for compliance with the Act.

**The Standards seek to provide:**

- increased clarity as to the scope of the DDA
- guidance for education providers about their obligations under the DDA and about the nature of the educational services that learners with disabilities and their parents/caregivers are entitled to expect under the DDA.

**The Standards extend the scope of the DDA in three areas:**

- inclusion in the definition of ‘education provider’ a range of organisations including preschools and bodies that develop and accredit curricula, training packages and courses (Disability Standards for Education, Part 1, pp. 8-9).
- the prevention of harassment and victimisation
- extension of the defence of unjustifiable hardship beyond the point of enrolment.

The Standards were developed as a result of extensive consultation that began in 1995. The legislation provides for a review of the Standards every five years.
Guidance Notes

The Standards are accompanied by Guidance Notes. These provide additional explanatory material, including background information and comment, to assist in interpreting and complying with the Standards.

A copy of the Guidance Notes is included as Appendix 2.

Activity 1

Expert Jigsaw

Divide into initial groups of five.

Give each person a card about one area outlined in the Standards (pages to photocopy are in Appendix 1 ‘Disability Standards for Education 2005’).

Ask individuals to read their card.

Ask those with the same heading/area of the Standards to make a group.

Ask group members to share their understanding of the area.

Ask group members to return to their place and share their information with others in their initial group.

Important terminology in the Standards

The Standards provide further explanation of key terms used in the DDA.

1. Education Provider — includes:
   • schools and preschools in the private and public sector (but not child-care providers)
   • post-compulsory education and training authorities
   • accreditation authorities such as the Senior Secondary Assessment Board of South Australia (SSABSA).

More details are in Disability Standards for Education, Section 1.5. See Appendix 1, p. 8.
2. **On the Same Basis** — means that a person with a disability must be able to:

- seek admission,
- participate in the program, and
- use the facilities and services

of education institutions **on the same basis** as a student without a disability so that the person has choices and opportunities that are comparable to those of other students without disabilities.

Section 2.2 of the Disability Standards for Education has more information. See Appendix 1, p.10.

3. **Adjustments** — are actions or measures taken that assist a student with a disability to:

- apply for enrolment,
- participate in the program, and
- use the facilities or services

on the same basis as a student without a disability. Measures include an aid, a facility or a service that the student requires because of her/his disability.

Disability Standards for Education, Section 3.3. See Appendix 1, p. 11.

4. **Reasonable Adjustments** — an adjustment is reasonable if it takes into account the needs of the learner and balances the interests of all parties affected. When assessing whether an adjustment is reasonable, consideration needs to be given to:

- the nature of the learner’s disability
- the effect of the adjustment on the learner’s ability to achieve learning outcomes, participate in courses and programs and operate independently
- the costs and benefits of making the adjustment.

A key aspect of the enhanced meaning of **reasonable adjustment** provided in the Standards is that the education provider is required to consult with the learner and/or her/his associate about the appropriateness of the adjustment. An education provider may provide an alternative adjustment to the learner’s preferred form of adjustment if the alternative is effective in achieving the desired purpose and would be less disruptive and intrusive for the learner and for others. It is most important to seek professional expertise in deciding on an adjustment.

Disability Standards for Education, Section 3.4. See Appendix 1, pp. 11–12.

5. **Reasonable Time** — the education provider must take reasonable steps to ensure that any adjustment required is made within a reasonable time. Whether or not the time is reasonable for any adjustments to be made depends on whether and when the student or their associate has provided:

- any relevant information about how the disability affects the student in relation to education or training, and
- the student’s or associate’s opinion about the adjustments.

Disability Standards for Education, Section 3.7. See Appendix 1, p. 13.
6. **Obtaining Disability Information** — an education provider is entitled to information about the learner’s disability and individual requirements, if that information is to be used for:

- assessing the nature and extent of the adjustment needed and the provider’s capacity to provide the adjustment, and
- clarifying the learner’s ability to comply with any non-discriminatory requirements of the course or program.

Disability Standards for Education. Guidance Notes, Section 4.3. See Appendix 2, pp. 4–5.

**Reasonable adjustments and unjustifiable hardship**

An **adjustment** will have costs and benefits.

Benefits may include positive learning, social and wellbeing outcomes.

Costs may include additional staffing, resources and facility modifications, and effects on others.

A **reasonable adjustment** balances benefits against costs.

It is important not to confuse the concepts of **unreasonable adjustment** and **unjustifiable hardship**.

It is necessary to **first decide** if the adjustment is reasonable and **then to decide** if making the adjustment will impose an unjustifiable hardship.

**Note:**

The Standards extend the concept of unjustifiable hardship to cover the whole time in which a learner is enrolled in an educational institution. (In the original DDA legislation, unjustifiable hardship applied only at the time of enrolment.)

As discussed in the previous chapter, the resources available to a state government education provider are considerable and it would be very difficult for a government preschool or school to successfully claim that the cost of an adjustment is an unjustifiable hardship. This is because the provision applies to systems and not to individual institutions within systems.

In assessing whether an adjustment is reasonable, the provider is entitled to maintain the integrity of the program and its assessment requirements.
Compliance with the Standards, in practice

- Professional expertise about the disability-specific needs of the learner must be sought. Education staff must collaborate with such persons with expertise.
- Information gathering processes need to be accessible and transparent.
- Information gathering must maintain the dignity, respect, privacy and confidentiality of the learner and her/his associates.
- The learner and/or associate must be consulted and their views sought about what makes a ‘reasonable adjustment’.
- Adjustments that are least disruptive and intrusive should be negotiated.

It is good practice for an education provider to ensure that there are review mechanisms in place to deal with any grievances arising from differences in opinions about what makes an adjustment reasonable. Schools/preschools should ensure that their grievance procedures address this.

Negotiation

The best outcomes for learners with disabilities are achieved by respectful negotiation. Being proactive, instead of reacting only to complaints, generates goodwill on all sides.

Such positive outcomes are achieved when there is a genuine partnership between the site management team, the teacher and the family. The provision of extra resources to support the inclusion of a learner with a disability will always be subject to negotiation with all parties involved.

Activity 2

This activity will enable you to recognise what you are already doing that demonstrates compliance with the DDA and Standards for Education.

Identify a learner in your site who has a disability and/or high support needs or a learning difficulty. Use Chart 1 to record what the site is currently doing to ensure this learner is able to access, participate and achieve in all aspects of education.

As you do this you are likely to think of actions/situations that may be discriminatory. Record these on Chart 2.

Finally, brainstorm future strategies that could be used to ensure compliance with the DDA and the Standards for Education.
### Activity 2 continued

#### Chart 1

<table>
<thead>
<tr>
<th>Area of the Standards</th>
<th>What is being done?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrolment</td>
<td></td>
</tr>
<tr>
<td>Participation</td>
<td></td>
</tr>
<tr>
<td>Curriculum development, accreditation and delivery</td>
<td></td>
</tr>
<tr>
<td>Student support services</td>
<td></td>
</tr>
<tr>
<td>Elimination of harassment and victimisation</td>
<td></td>
</tr>
</tbody>
</table>

#### Chart 2

<table>
<thead>
<tr>
<th>Area of the Standards</th>
<th>Identified areas of ‘risk’ or possible discriminisation</th>
<th>Future strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrolment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation</td>
<td></td>
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</tr>
<tr>
<td>Elimination of harassment and victimisation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Activity 3

Read these scenarios and use the questions below as a framework for discussion in group(s).

Scenario 1: A small rural primary school has little experience of learners with disabilities. The school enrols a five year old girl with learning difficulties, poor muscle tone and speech and language difficulties. She has two siblings at the school.

Scenario 2: A year 11 student with intellectual impairment is in a special class of nine students. Because he is the only student in year 11 he has been told to do year 12 subjects so that a group of four students is following the same SACE program.

Scenario 3: A year 8 student with mild intellectual impairment and visual perception and fine motor difficulties is denied access to Technical Studies because of the safety risk to herself and others.

• What are the key issues in each situation?
• Identify any discriminatory or potentially discriminatory practices or behaviour and the relevant area(s) of the Standards.
• How does the situation relate to the principles of on the same basis and reasonable adjustments?

Discussion points about each scenario are provided below.

Comments on Activity 3

Discussion points for scenarios

Scenario 1

Key issues

1. The need to gather information from the child’s parents, recommendations from assessments and reports
2. Requesting the involvement of disability-specific support personnel
3. Identifying ‘reasonable accommodations’
4. The need for staff training and development
5. Identifying resources available and how to access them
6. Ascertaining equipment needed and how to obtain it
7. Two siblings attend the school.
Scenario 1 continued

Identify any discriminatory/potentially discriminatory practices or behaviours and the relevant area of the Standards.

1. This situation could be potentially discriminatory in all areas of the Standards.
2. It would be discriminatory if the school were to assume that this child could participate in the curriculum on the same basis as other five year old students without disabilities.
3. It would be discriminatory if a suitable curriculum that ensured that the child could access all areas of the curriculum on the same basis as other children was not developed to meet this child’s needs.
4. It would be discriminatory if support was not used in the school or not accessed from any relevant support services.
5. Although the school has few learners with disabilities, it would still be discriminatory if measures were not taken to ensure that no harassment or victimisation of this child occurs.

How does the situation relate to the principles of on the same basis and reasonable adjustments?

The school has enrolled the child on the same basis as other students, but now needs to ensure that she can attend and participate on the same basis as other learners by making whatever reasonable adjustments are necessary. This requires the school to contact a speech pathologist and to speak with the girl’s family and their support agency, regarding the assessment of her functional skills and modifying and/or providing any specialist equipment and support.

Scenario 2

Key issues

1. This student should have a curriculum developed and delivered to meet his needs, not the needs of the teacher or other students.
2. The student should be doing year 11 subjects following a recognised SACE pattern that has been recorded in his Learning Plan as part of the Negotiated Education Planning process.

Identify any discriminatory/potentially discriminatory practices or behaviours and the relevant area of the Standards.

1. Making the student study subjects at an inappropriate year level is discriminatory.
2. All other year 11 students in mainstream classes would be studying SACE Stage 1 subjects.
3. This requirement to study year 12 subjects does not meet the Standards set out in Participation, Curriculum and Student Support Services.
Scenario 2 continued

How does the situation relate to the principles of on the same basis and reasonable adjustments?

This student is not able to study year 11 on the same basis as other year 11 students, and reasonable adjustments to ensure he can do this are not being made. In a class of nine students, it should be possible to use support services and school resources to ensure that he has an individual curriculum at an appropriate year level.

Scenario 3

Key issues
1. The student not accessing the curriculum on the same basis as other students
2. The teacher’s right to work in a safe environment
3. All students’ rights to learn in a safe environment and within a supportive learning environment.

Identify any discriminatory/potentially discriminatory practices or behaviours and the relevant area of the Standards.
1. Refusing to allow this student to attend Technical Studies due to her disability is discriminatory.
2. Support should be provided to ensure that both she and the other students and staff are safe.
3. The areas of the Standards that are relevant to this situation are Participation, Curriculum Development, Accreditation and Delivery and Student Support Services.

How does the situation relate to the principles of on the same basis and reasonable adjustments?
This student is not being treated on the same basis as all other year 8 students, nor are reasonable adjustments being made.

Further Information

The Disability Standards for Education are available from the website of the Commonwealth Attorney General’s Department

(Also, see Appendix 1 of this document.)
3. Human Rights and Equal Opportunity Commission

Commonwealth legislation

The Human Rights and Equal Opportunity Commission (HREOC) was established following the passage of the legislation Human Rights and Equal Opportunity Commission Act 1986.

People who believe that they have been discriminated against can complain to the commission, which will investigate their complaint and arrange conciliation or redress if discrimination has occurred.

The Disability Discrimination Act 1992 (DDA) contains provisions which enable people with disabilities to lodge a complaint with HREOC if they feel they have been excluded from access to services normally available to people without a disability.

State and territory legislation

Most states and territories have Equal Opportunity legislation. In most cases, people who wish to lodge a complaint about discrimination can choose to complain under either the Commonwealth or state/territory legislation.
HREOC

The Commission administers Commonwealth laws relating to human rights infringements and discrimination. It is an independent body and acts without favour to any party involved in a complaint.

The commission’s responsibilities fall within four main areas:

- education and public awareness
- discrimination and human rights complaints
- human rights compliance
- policy and legislative development.

The Commission has the legal power to conduct enquiries and resolve matters of discrimination and human rights infringement under four different Acts (see below). These Acts, passed by the Commonwealth Parliament, are aimed at protecting people from certain kinds of discrimination in public life and from violation of their human rights by government departments and agencies.

The Commission receives, investigates and conciliates complaints under the following Acts:

- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975

A person who considers that he or she has experienced discrimination on the grounds of disability can make a complaint to HREOC. The complaint will be resolved through investigation and conciliation. If this is unsuccessful, the complainant can apply to the Federal Court to have the matter heard and determined.

HREOC and Education

The HREOC website <http://www.humanrights.gov.au/infosheet.html> provides useful and interesting information for schools and preschools about how the Disability Discrimination Act has been interpreted and applied in education.

The following information is taken from a brochure about HREOC, which may be downloaded from the above site.

Education

‘Human rights education is an international obligation that Australia has consistently supported.

One of the central functions of the Commission is to raise awareness about human rights in Australia …
To reach as many people as possible, the Commission:

- works with teachers and students, to develop curriculum-linked study units using on-line, CD-ROMs and video resources
- works with employers, to provide information and resources to reduce discrimination and harassment in employment
- works with community groups, to provide information and resources to assist with their work
- works with members of the legal profession, holding seminars and publishing updates on human rights legal issues
- hosts conferences and events, such as the annual Human Rights Medal and Awards ceremony …

By joining one of the Commission’s electronic mailing lists you will receive up-to-date information about the Commission’s activities. Lists include:

- Human rights education
- Information for employers
- Legal and complaints
- Human rights
- Indigenous
- Disability rights updates
- Racial discrimination
- Sex discrimination

To join go to:  

**Activity 1**
Follow the pathways: Disability rights/Information on rights and responsibilities/Education/ Brief Guide to DDA and Education or Frequently Asked Questions.  
Reflect on the content of these readings and how the information may impact on your work practices.

**Activity 2**
Follow the pathway: Disability rights/Complaint decisions/ Conciliated outcomes /Education.  
Read the information provided. What possible implications are there for your work practices or for your worksite?
HREOC Conciliation process

If an issue of alleged discrimination is not resolved at a local level, then a complaint may be made to HREOC, which will then determine what is ‘fair and reasonable’, not right or wrong.

The following flowchart shows the processes that may occur with a complaint to HREOC.

A complainant may make an application to the Federal Court within 28 days to have the matter heard and receive a legal determination and an enforceable order.


When a formal complaint is made by parents/caregivers to HREOC regarding treatment of a learner by DECS personnel, the complaint is against the system (i.e. DECS), not against an individual employee (e.g. principal, teacher or school services officer). The employee(s) may be named in the details of the complaint, but the employee(s) is/are not the subject of the legal action.

Further Information


(Also, see Appendix 1 of this document.)

