

**A SUBMISSION BY THE
AUSTRALIAN EDUCATION UNION
TO THE DETYA CONSULTATION ON DRAFT DISABILITY
STANDARDS FOR EDUCATION UNDER THE DISABILITY
DISCRIMINATION ACT (DDA)**

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1. Introduction

The AEU is the union representing 155 000 teachers and other education workers in pre-schools, public schools, and TAFE Colleges. The issue of disability standards is of considerable importance to our members, and therefore to the AEU.

The AEU responded to the earlier “Discussion Paper on the Disability Discrimination Act Disability Standards in Education” in 1997, and comments made here are made within the context of that response.

2. General Reaction to the Standards

The AEU remains strongly committed to the concept of disability standards in education. The AEU believes that in general the Draft Standards are a reasonable starting point, but that they leave too many areas of uncertainty and potential dispute. Criticisms and comments in this submission are therefore made with the intention of strengthening and building on the work that led to the current draft. The Standards as they stand would be an improvement on the current situation and the AEU would support proceeding with these rather than not proceeding at all, although the AEU believes that there is an opportunity to make them even more useful.

3. Need for Processes to be Defined

The primary omission in the Standards is the failure to establish processes for resolving differences between the parties involved. Without such processes, the establishment on the one hand of the rights of individuals and on the other of the obligations of employing authorities inevitably sets the scene for disputation. It is therefore imperative that the Standards establish processes within which these rights and obligations can be worked through rather than used as foundations from which to create conflict.

This need for processes is referred to in several places below.

4. Situation for Education Workers

The major criticism that the AEU has of the Draft Standards is that they do not sufficiently clarify the situation of teachers and other education workers. The Standards go some way to clarifying the role of employing authorities (though, as will be discussed below, there is need for greater specificity in some areas) and elaborate the rights of students and their parents. However, they do not deal with the issues confronted by those in the middle - the teachers and other education workers in systems of education such as public schools.

Most parents do not approach the Authority (e.g. education department) but the individual institution. It is normally at this level that individual situations and conflicts are dealt with. The Standards should

acknowledge this and express Authority obligations in a way that ensures they are met at the level they occur. This is the face at which the interaction takes place, and yet there is little in the Standards which indicates what employees have a right to expect from higher up the system, or which gives a clear indication of how they respond to a situation they regard as inadequate.

In its earlier Response the AEU noted:

The current process consists of resolution through complaint arrangements, some of which are resolved before formal DDA complaints are made and some of which go through to high courts and serve to set case law. In all circumstances, this requires that there be victims. In most cases those victims are the students themselves and the education workers that teach them. For these people, there is considerable and often excessive stress and trauma involved in the process. For those teachers involved, there may well be long term personal and career consequences due to purely random and uncontrollable chance.

The educational institutions involved are also put under considerable pressure, both within themselves and in their relationship with the community, which has consequences that go way beyond the issue itself.

The AEU is concerned that Employing Authorities are too willing to take the line of least resistance, do not themselves accept full responsibility for the situation, and will only become involved when forced to by someone, usually a teacher or an educational institution, taking a stand against an unacceptable situation.

This is a totally unacceptable means of resolving the issues around students with special needs. It is destructive for the individuals concerned, for the educational institution, and ultimately for the effective implementation of the Act. It serves nobody's interests. It is therefore imperative that some level of certainty be given to the situation through the introduction of Standards which are known and applicable, and which remove victims from the process.

The current Draft Standards do not go any way towards providing a level of certainty, and continue to leave huge potential for disputes with all their inherent strains and traumas. They therefore are likely to fail to achieve what must be seen as one of their main objectives - the reduction of disputation.

5. Level of Compliance

Section 4 "Who must comply with these Standards" binds education authorities and institutions, including public institutions in a general way. As written, this could be interpreted to mean that individual institutions are bound by each of the Standards. Whilst not denying the generality of the DDA, there is a question as to whether all of the Standards are equally pertinent to both authorities and individual institutions. Such an interpretation would ignore the fact that some institutions do not have the autonomy to comply with some of the Standards. The failure to outline the respective but differing obligations of Authorities and institutions leaves institutions and education workers as "the meat in the sandwich"

between the specified rights of the student and their parents and the unspecified obligations of Authorities to ensure that resourcing is adequate to meet those rights.

The Standards do not adequately specify the range of resources which Authorities should supply to their institutions in order that they can meet their obligations under the Act, nor does it specify that these must be additional to standard resourcing. The potential for systems to cost shift responsibility to the individual institution remains. The capital costs for adjusting physical structures must be additional to institutional budgets and there must also be additional support for the educational program of the institution. The costs of adaptation can often be considerable.

6. Right of Enrolment

A key issue of contention is frequently the extent to which individual institutions can argue “unjustifiable hardship”, or conversely the extent to which systems can meet the Standards by planned system provision, such as the provision of schools designated as appropriate for students with specified disabilities. The Standards leave a considerable degree of confusion on this matter.

Section 4, referred to above, taken in conjunction with Section 5 on Enrolment, would appear to leave the issue of reasonable adjustments at an institution level, and place the onus for reasonable adjustments within that institution, even though the discretionary funding may not be within the autonomy of the institution, and the system may make alternative arrangements.

Students with disabilities must receive the range of resources, including such things as therapy, in a way that does not impinge on the general running of the schools and other students, or on the ability of the Authority to provide a high level of education services generally in the area. At the same time, many disabilities, can and should be accommodated within any school.

The AEU repeats its strong belief that whilst it is supportive of moves to increase the integration of students with disabilities into mainstream education, there are considerations that go beyond the wishes of the individual parent and student, and these must be recognised within the Standards. This issue of enrolment is not best dealt with solely at the individual institution level.

This again emphasises the importance of a process that considers enrolment and reasonable adjustment on broader basis.

The right to enrol also needs to make clear that prospective students have a choice between mainstream schools and those with specialist resources, ie. education support schools , centres or units. The making of choices should be informed so a well resourced consultation process should be articulated allowing all stakeholders and service providers to resolve the issues. This may also apply to the Section on Participation (Section 6).

7. Reasonableness

The AEU notes that “the impact of the appropriate actions or adjustments on other students and on staff is included in Section 3.5 on “Reasonableness”, and welcomes this inclusion as an important consideration.

However, this section talks of “considered judgement”, but gives no indication of who makes that judgement. Whilst the Standards, quite rightly, give considerable weight to the rights and wishes of students and their parents, there is little mention of the role of expert opinion or the context within which this “considered judgement” will take place. Decisions should be based not only on what the parent wants for their child, but expert advice on what is in the best interests of the child, and the professional opinion of teachers, and this must take place within a defined process.

8. Unjustifiable Hardship

There is no attempt to describe “unjustifiable hardship”, a key term which remains highly contestable. Some elaboration, perhaps including examples of acceptable and unacceptable practices based on evidence from elsewhere, is necessary if the Standards are to begin to progress the issue.

The AEU also believes that strictly speaking in arguing unjustifiable hardship one is arguing that one is discriminating lawfully, not that one is not discriminating. Therefore the statement in Section 5.2 which states that “education providers are obliged to ensure that prospective students with disabilities are not discriminated against...” would also seem to be technically incorrect in that it goes beyond the terms of the DDA.

9. Harassment

The Section on Harassment (3.6) is supported by the AEU, but does not go far enough. It should be extended to ensure that none of the parties in the process are harassed. The right of all students with disabilities to quality advocacy is supported, but regrettably much advocacy at present tends to be confrontational and results in the harassment of teachers and other education workers. Establishing clear and transparent processes within which standards of advocacy are set would alleviate some of the problems in this area.