

Dyslexia and anti-discrimination law in schools

Dyslexia is included in the definition of “disability” for the purposes of Australian anti-discrimination law. This means that dyslexic students have legal protection from discrimination by schools on the basis of their dyslexia.

Schools must take reasonable steps to ensure that the dyslexic student can participate “on the same basis” as a student without the disability. The student (or parent/carer) are entitled to consult with the school and have the school make “reasonable adjustments” to assist the student to participate in courses on the same basis as non-dyslexic students. A reasonable adjustment is one that balances the interests of all parties, not just the student, so that a school can refuse to make a requested adjustment if it is unreasonable.

Australian disability discrimination law

The Disability Discrimination Act 1992 (“DDA”) covers all schools throughout Australia. One of its aims is:

*“to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of: ... education”.*¹

The Disability Standards for Education 2005 (“**Education Standards**”) apply to schools and other educational institutions. Guidance Notes to the Education Standards state:

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.

“Disability” is defined to cover a wide range of bodily and mental conditions including:

*a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction.*²

This includes dyslexia.³

Disability Discrimination Act and education

The DDA makes it unlawful for an educational authority to discriminate against a person on the grounds of their disability in certain ways including:

- refusing admission as a student;
- denying or limiting access to any benefit provided by the educational authority;
- expelling the student;
- subjecting the student to any other detriment;
- developing curricula with content that will exclude the person from participation or subject them to any other detriment.⁴

However, discrimination is not unlawful if avoiding discrimination would impose an unjustifiable hardship on the school.⁵

Disability Standards for Education 2005

The Education Standards apply to four general areas of schooling:

1. enrolment of prospective students;
2. participation of students in courses and use of school facilities and services;
3. design of courses;
4. use of student support services provided by the school.⁶

In each of these areas the school must take reasonable steps to ensure that the disabled student or prospective student can participate **“on the same basis”** as a student/prospective student without the disability.

“On the same basis” means that the disabled student/prospective student has opportunities and choices **“comparable”** with those offered to students/prospective students without the disability in the areas of:

- enrolment;
- participation in courses; and
- use of school facilities and services.⁷

“Comparable” does not mean “exactly the same” – some disabled students may not be able to participate on the same basis as other students if all students are treated in the same way.⁸

Reasonable adjustment

There are four steps that a school must undertake to comply with the Education Standards:⁹

1. consult with the student or their associate (such as a parent);
2. consider whether an **“adjustment”** is necessary;
3. if an **“adjustment”** is necessary, identify a **“reasonable adjustment”**;
4. make the **“reasonable adjustment”**.

An **“adjustment”** can be any measure or action (or group of measures of actions) by the school that would assist a disabled student to enrol, participate in courses or use the school’s facilities or services.¹⁰

The school is only required to make a **“reasonable adjustment”** - which is an **“adjustment”** that balances the interests of all parties affected. This means that the school can take into account not only:

- the student’s disability;
- the views of the student or their parent; and
- the effect of the adjustment on the student;

but also:

- the effect of the adjustment on the school, its staff and other students; and
- the costs and benefits of the adjustment.¹¹

Thus, schools cannot be forced to make unreasonable adjustments and they can consider any alternative reasonable adjustment that would be less disruptive and intrusive and no less beneficial for the student.¹²

If an adjustment needs to be made, the school must take reasonable steps to ensure that it is made within a reasonable time.¹³

Examples of possible adjustments

Examples of the type of adjustments that may be available under the Education Standards (depending on the circumstances) include:

- review of course requirements, in the light of information provided by the student or parent, to include activities in which the student is able to participate;
- negotiation and implementation of appropriate programs necessary to enable participation by the student;
- providing additional support to the student where necessary, to assist them to achieve intended learning outcomes;¹⁴
- ensuring that course delivery modes and learning activities take account of the intended educational outcomes and learning capacities and needs of the student;
- making study materials available in a format appropriate for the student;
- adjusting teaching and delivery strategies to meet the student's learning needs and address any disadvantage in their learning resulting from the disability, including providing additional support, such as bridging courses or development of disability specific skills;
- adaptation of assessment procedures to enable the student to demonstrate their knowledge, skills or competencies;¹⁵
- ensuring staff awareness of the availability of specialised services;
- provision of any necessary specialised equipment to support the student;
- facilitating the provision of specialised services, where necessary, including through arrangements with specialised service providers, such as speech therapists and occupational therapists; and
- provision of appropriately trained support staff, such as specialist teachers, note-takers and teachers' aides.¹⁶

None of these actions is compulsory in any particular situation, but they are the types of actions that can comply with the Education Standard.¹⁷

The DDA and Education Standards also prohibit harassment or victimisation of disabled students.¹⁸

The Education Standards have been made under the DDA and a breach of them is a breach of the DDA. Conversely, if a school complies with the Education Standards, they are not in breach of the DDA.¹⁹

Victoria

In Victoria the Equal Opportunity Act 2010 provides similar, although less detailed, protection from discrimination by schools against disabled students on the basis of their disability.²⁰ This Act also requires schools to make reasonable adjustments,²¹ unless the adjustments are not reasonable²² or the student could not participate or derive any substantial benefit from the educational program even after the adjustments are made²³ or the school has complied with the Education Standards regarding that adjustment.²⁴

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- ¹ DDA s3.
 - ² DDA s4; Education Standards ss1.4; similar definition in s4 Equal Opportunity Act 2010 (Vic).
 - ³ *Randell v Consolidated Bearing Company (SA) Pty Ltd* [2002] FMCA 44 (3 April 2002) [39].
 - ⁴ DDA s22.
 - ⁵ DDA s29A and Education Standards s10.2.
 - ⁶ Parts 4, 5, 6 and 7.
 - ⁷ Education Standards s2.2.
 - ⁸ Education Standards s2.2 Note 2.
 - ⁹ Disability Standards for Education 2005 Guidance Notes
 - ¹⁰ Education Standards s3.3.
 - ¹¹ Education Standards s3.4
 - ¹² Education Standards s3.6.
 - ¹³ Education Standards s3.7
 - ¹⁴ Education Standards s5.3.
 - ¹⁵ Education Standards s6.3
 - ¹⁶ Education Standards s7.3
 - ¹⁷ Disability Standards for Education 2005 Guidance Notes part 5
 - ¹⁸ DDA s37 and Education Standards Part 8.
 - ¹⁹ DDA ss 32, 42 and Education Standards Part 8.
 - ²⁰ Equal Opportunity Act 2010 s38.
 - ²¹ Equal Opportunity Act 2010 s40.
 - ²² Equal Opportunity Act 2010 s41.
 - ²³ Equal Opportunity Act 2010 ss40(2), 41.
 - ²⁴ Equal Opportunity Act 2010 s40(4).