



# 2015 Review of the Disability Standards for Education

June 2015



people with  
disabilities  
western  
australia

## About DDWA and our work in education

Developmental Disability WA is the peak body in Western Australia for people with intellectual disability and their families. For almost 30 years our organisation has been advocating for the rights and needs of people with intellectual and other developmental disability, their families and the people who support them. Our work has been instrumental in raising awareness of the unmet need for support for people with disability and their families, and DDWA was a major contributor to the work on the national campaigns which after many years have ultimately led to the implementation of the National Disability Insurance Scheme.

Our membership includes around 1500 individuals and family members as well as support groups, service provider organisations and professionals working in both government and non-government agencies. Our reach across Western Australia extends beyond our membership as we are connected to community in the regions and growing numbers of supporters and others in the metropolitan area who have an interest in the rights and needs of people with intellectual disability and their families.

Our model of systemic advocacy has three interlinking elements:

- 1: supporting people with developmental disability and their families to have a strong voice
- 2: partnering with others to develop more connected and inclusive communities, and
3. influencing government and other decision makers

In 2012 DDWA responded to the calls from our members who were looking for information about, and seeking advocacy in relation to, education for their children with intellectual and other developmental disabilities. Our members' experiences reflected the need for greater awareness of people's rights in education – greater awareness from both the educators and the families. DDWA commenced Learn and Grow, a body of work dedicated to advancing the rights and needs of students with developmental disability. In our introductory Learn and Grow document in which we outlined some of what we had learnt through a series of initial discussions with 50 families in WA, we stated that

*“The aspirations and intent of Learn and Grow are consistent with the spirit of the School Education Act 1999, and the Disability Standards for Education 2005 which enshrine the rights of all students to a quality education and our responsibility as a community to support that without discrimination.”*

DDWA advocates for and together with individuals and families, support groups and organisations. We advocate for people to be able to make their own choices and we welcome members who have exercised a wide range of options for themselves and for their families.

Our members and their children attend government and non-government mainstream primary schools, secondary schools, specialist education schools, education support centres located on the same grounds as mainstream schools. Some of the students move between education facilities on a regular daily or weekly basis, others are home educated and others again are in between a number of these settings as they try to find a place which will accept them and provide them with the education they are seeking and to which they have a right. Some students would be described as having fallen through the cracks of the education system.

### **About PWdWA and our work in education**

Since 1981, PWdWA has been the peak disability consumer organisation representing the rights, needs, and equity of all Western Australians with a physical, intellectual, psychosocial, or sensory disability via individual and systemic advocacy. We provide access to information, and independent individual and systemic advocacy with a focus on those who are most vulnerable. PWdWA is run by and for people with disabilities and aims to empower the voices of all people with disabilities in Western Australia.

Our work in education includes advocating with and on behalf of individuals and their families who have experienced difficulties in their involvement with education providers and who are seeking assistance in having issues and complaints resolved.

We work with individuals and families who have often felt unsupported and often outnumbered in their approaches within the education system, and who by engaging the services of advocates seek some equality in representation alongside education providers when attempting to resolve issues.

DDWA and PWdWA's response to the Review refers to the experience of education in Western Australia only.

In responding to the Review DDWA and PWDWA have addressed the Terms of Reference in the context of the experience of our members and others as communicated to us by them.

**1a) Consider whether the Standards have assisted people with disability to access and participate in education and training opportunities on the same basis as those without disability.**

***This will include a review of participation, inclusion and educational support provided to students of all backgrounds, including students in regional, rural and remote areas, students of culturally and linguistically diverse backgrounds, and Indigenous students.***

At the outset we contend categorically that the Standards have a long way to go in assisting people with disability to access and participate in education and training opportunities on the same basis as those without disability.

Schools now operate under a structure of autonomy not experienced even as recently as a decade ago. As schools operate far more as individual entities, so the experience of our members varies considerably from school to school, with some principals and teachers exceeding the expectations of the parents, others meeting them and far too many others falling well short of expectations.

Evidence of the Standards not yet meeting the objects of access and elimination of discrimination is the existence still today of resolutions sought and complaints presented to schools, education department offices, Director General, advocates, advocacy organisations, legal centres, parliamentary representatives, equal opportunities commission and others.

The natural and obvious question then is one of interpretation of the Standards, and whether the issues raised and the complaints are based on the correct interpretation of the Standards and their objects. We contend that the Standards are designed with exemptions so that the principles and objects are weak and indiscernible. (for example Part 10 – Exceptions; 10.2 – Unjustifiable Hardship states:”... *it is not unlawful for a provider to fail to comply with a standard if, and to the extent that, compliance would impose unjustifiable hardship on the provider.*)

This is an area where a mechanism to enable parents to question the implementation or lack of implementation of that particular standard would be helpful. The interpretation of “unjustifiable hardship on the provider” can be interpreted by the provider but it would be difficult to be questioned or challenged by a student or parent/carer.

On the same basis does not mean simply in the same classroom, or simply using the same curriculum tools. On the same basis means taking into account the differences each and every child brings to the classroom and working with the differences on the same basis as an education provider may work with any other student.

DDWA and PWdWA support families to make choices for their children in a range of settings, as outlined earlier, though the one common element, irrespective of which setting is chosen, is that an education setting is a place of learning. The central meaning of education is the imparting, on the one hand, and the acquisition, on the other hand, of knowledge. We do not support a notion of education providers allowing a student to

complete a year or any other period of time without that student having acquired knowledge, having improved their learning and improved their outcomes in particular areas. This would not be acceptable for students without disability. If education opportunities are to be provided on the same basis then it also must not be acceptable for students with disability.

Taking into account the different abilities of all students within a classroom, the expectations of all students must be set at the highest level possible, if the opportunities are truly to have been provided on the same basis, as set out in the Standards.

In addition to the many media reports we read, we are told of students who have been discouraged or precluded from sitting examinations and tests, which is not only an issue of discrimination in terms of provision of opportunity through the single act of the examination or test, but goes to the issue of expectations of the students and therefore of equality of access to education opportunities more generally.

We have been told of principals completing forms and giving them to parents so that parental consent can be given to their child being withdrawn from testing. We have been told by a parent that during primary school she wanted her child to sit the NAPLAN test, but was so discouraged that it did not happen. Last year the parent insisted her child sit the NAPLAN test and he exceeded the expectations of the education providers but more importantly the expectations of those previously held by his parent.

We consider that in instances which would utilise reasonable adjustments, such as separate examination rooms, a longer time to complete tests, assistive technology, that these should be used as the rule, rather than the exception and which are only utilised if and when they have been hard fought for.

Examples such as these demonstrate that in terms of provision of access to, and participation in education, as well as of the expectations of students by education providers, there is much work yet to be done to ensure that *the Standards have assisted people with disability to access and participate in education and training opportunities on the same basis as those without disability.*

We believe that the Standards taken in isolation will not of themselves provide the mechanisms for addressing these issues, but that the Standards must refer and link directly to other complementary legislation which would assist education providers to implement the objects of the Standards.

***1b) Consider whether the Standards have assisted to raise awareness and eliminate discrimination (including harassment and victimisation) of people with disability in education and training***

DDWA and PWdWA contend that at this point the Standards have some way to go before the objects of assisting to raise awareness and eliminating discrimination of people with disability in education and training have been met.

We acknowledges that the Standards provide a framework for education providers to eliminate discrimination but again the existence of issues raised and complaints not yet

resolved is evidence that the Standards have not met their objects, including eliminating discrimination (including harassment and victimisation) in the eyes of those seeking to have their rights upheld within the framework provided by the Standards.

In accordance with Recommendation One of the Government's response to the Review in 2010, a disability and education website was to provide information online on the Standards. While there does not appear to be a specific website, information can be found searching for 'education' and 'disability', at [education.gov.au](http://education.gov.au), [ag.gov.au](http://ag.gov.au) and elsewhere. However research undertaken by DDWA found that the great majority of individual schools in our State of Western Australia do not have information on the Standards, nor indeed on disability generally, on their websites. As a first point of call for most families, their own school's website would be seen to be a practical place for this information to be made available.

DDWA recommends that information is made available each year, to all parents within a school, on the school website and other communication channels, with information on the Standards. We acknowledge the requirement that information is provided on enrolment. However our view is that information on the Standards should be made as accessible as possible to as many people as possible, not only to people who may potentially require reference to them.

The online material providing information on the Review of the Standards encouraged people to participate in online forum discussions on a number of topics, including:

- Is the community aware of barriers faced by people with disability?

We believe that by increasing awareness of the Standards, of their existence and of their objects, the wider community will also become more informed of the barriers faced by people with disability, as well as of their rights and needs.

DDWA and PWdWA further recommend that the bi-annual National School Option Survey (NSOS) which since 2014 is required to be conducted by schools across Australia, inquire of the key stakeholders (students, and through them, their families) as to their understanding of the Standards. Inquiry about the Standards should be a specific stand alone question to gauge accurately the understanding of the Standards' existence, and of their intent or objects. On the basis of the response to questions on this particular topic, further information should be communicated if it has been demonstrated as being required.

We consider that increased awareness of the Standards would also lead to improved understanding and knowledge on the part of education providers which may reduce what has been described to us by some students, parents and advocates to be harassment and victimisation. We hear often of the use of outdated and harmful restrictive practices within school settings. These include but are not exclusive to verbal victimisation, exclusion from activities, from classrooms, from schools by suspension, as well as episodes of restraining, and of physical isolation. We believe that increased awareness of the Standards would lead students and parents to advocate for their rights and respond to these practices, but also would lead more education providers to seek alternatives to some

practices which are currently accepted in some spheres but which need to be updated and replace to become acceptable.

We recommend work be undertaken which through collective input, increased awareness and knowledge, would lead to a more speedy development of alternative and acceptable practices which will reduce the episodes of and feelings of victimisation and harassment. In the same way as this work is a priority in the disability sector, in health and in ageing, we see this as an absolute priority to be addressed in education.

***1c Consider whether the Standards are understood and used by education and training providers to provide a quality education which meets students' needs***

DDWA and PWdWA acknowledge the introduction of the Nationally Consistent Collection of Data on School Students with Disability in 2015, the trial for which began in 2014. We are hopeful that the national data collection, in concert with the Standards, will significantly increase the understanding by education providers of the rights and needs of students with disability and assist them to provide a quality education which meets students' needs.

We are heartened to see reference to quality education as opposed to simply education. We do not consider that the existence of the Standards alone can provide the understanding and support needed by education providers to assist them in delivering a quality education, but that the Standards must be a critical part of other complementary legislation and policy such as the national data collection.

DDWA and PWdWA recognise that the Standards do not contain a mechanism for the measure of outcomes including quality of education. With a greater focus on the rights and needs of students with disability through the national data collection we would be seeking evidence that the collection is being used as an opportunity for education providers to review their learning and support systems and processes to continually improve education outcomes for students with disabilities.

We are aware that resources now exist for education providers to understand their responsibilities under the Standards to ensure that students with disability are able to access and participate in education on the same basis as other students. We refer to the online professional learning materials on the Disability Standards for Education 2005. We are aware that education providers must also now complete an online module relating to the Standards however we would be seeking information as to the implications of non-compliance in terms of completion of such a module.

As discussed earlier education providers now operate on a far more autonomous level, and their one line budget means they manage their own schools far more as individual entities rather than as part of a larger education system. We know that in some schools professional development is delivered in-house by staff who are expert in particular areas as opposed to past practices of inviting in people with particular expertise or experience, or sending staff out to learn from others. Investment in teachers both in terms of time but more so in terms of financial investment, when there is a risk of those teachers moving to another school in the near future, is not desirable for a school looking to be fiscally prudent.

DDWA and PWdWA acknowledge that the best practice in achieving quality educational outcomes is not necessarily and not always related to the amount of financial resources allocated, but to the quality of the commitment, together with leadership, culture, skills and training of the education providers.

Nevertheless we believe there is a place for rewarding education providers who have demonstrated a commitment to the Standards by providing training and measuring the principles and objects of the Standards within their own schools.

We believe that a culture will change when the leadership also supports and demonstrates the need for that culture to change. We therefore believe that the Education Departments must take a lead in rewarding those schools who demonstrate a commitment to improving understanding and implementation and genuine agreement of the Standards, over and above other professional development provided to their teaching staff.

***1d Consider whether the Standards are understood and used by students with disability of all backgrounds and their families to advocate for their rights.***

On a broad level, many of our members understand that they have rights to an education. On a more specific level many of those same members do not understand that these rights are enshrined in both State and Federal legislation. Further, many are not aware of the Standards, nor of the Standards' objects to eliminate discrimination and to provide a right not only to an education but to an education on the same basis as those without a disability.

On another level, many of our members understand the Standards and use this as a means to advocate for themselves or their family member usually their child. However it is not understood why if a right exists, as enshrined in the Standards (or other relevant legislation) there is then no mechanism to ensure that the rights so advocated for are upheld.

We would go further to state that we consider the exemptions contained in the Standards, sufficient to render the Standards passive, weak and redundant in many cases as a tool for advocacy. Part 10 – Exceptions; 10.2 – Unjustifiable Hardship, provides for education providers to be exempted from the Standards in all areas other than in relation to Harassment and Victimisation.

To counter the ineffectiveness of the Standards as a framework for rights and thereby as a tool for advocacy, particularly when Part 10 – Exceptions (in particular 10.2) is utilised by the education provider, DDWA and PWdWA recommend that a mechanism for appeal (or complaint or review about a decision) be set out within the Standards.

DDWA further recommends that the mechanism for appeal be one which is student/family focused rather than department focused, that it be accessible and provide support outside of the system about which the student/family is appealing. In other words, the current system of education departments being the prescribed place to go to, to make a complaint about the education department is an absurdity.

In Western Australia the current process a student/ parent/advocate must follow, in a situation where they have an issue or complaint is to raise it with

- the teacher; then if not resolved
- the principal; then if not resolved
- the regional office of education department; then if not resolved
- the Director General; then if not resolved
- the Ombudsman

The Commonwealth Department of Education provides that there is an additional option

- The Equal Opportunities Commission

We contend that in many instances after a parent has met with the teacher to raise or resolve an issue, in some instances left with it unresolved and then taken it to the principal, that many parents do not have the energy, inclination or confidence to take matters further to the regional office or further still.

DDWA supports recognition of an accepted practice of advocacy, where a student, but more often a parent, is supported in their advocacy in an education setting.

We consider an acceptable resolution process to be one where if an education provider has the right to invite a panel to a meeting with a parent, the parent is notified that a panel format will occur. Further, the parent is equally entitled to bring a panel of a similar number of people/advocates/support people to a meeting. We consider an acceptable practice to be one where a parent is actively encouraged to bring advocate, professional such as a therapist, or any other support person, to support them in a meeting with an education provider. Meeting formats are currently ad hoc, formats are inconsistent from school to school, and the rights of students/parents at meetings are not enshrined in the Standards or elsewhere.

Accepted guidelines for standards and formats of meetings for resolution should be developed in order for the Standards to have greater effect in the area of elimination of discrimination.

With over 3.5 million students attending school in Australia, they together with their families and carers represent a large stakeholder group which is not represented in any formal sense in terms of their engagement with education providers. The education providers have a natural representation in their professional setting, however the families are often acting in isolation, and lacking the confidence and the support to work with experienced professionals and an adversarial relationship often results. Access to an independent and accepted agent or agencies of advocacy and support for families is therefore critical to the fair and equal treatment of students and families in resolution of issues and presentation of complaints.

Ideally families and professionals would be given support to work together to increase opportunities in education generally, including the achievement of the objects of the Standards.

This submission is the not forum for details as to how this collaborative working relationship can be met however our organisation will continue to advocate for such a work to be undertaken with the ultimate goal of improving working relationships between education providers and families so that each are equally relevant in the education of the student.

## ***2. Identify any recommendations that could improve the effectiveness of the Standards***

DDWA has outlined a number of recommendations throughout our submission, which we believe could improve the Standards for them to become more effective. In summary, and in addition:

- Development of accepted and consistent meeting practices for education providers and students/families when raising issues or complaints/advocating/self-advocating
- Development of measures of achievements of the objects of the Standards; an annual audit to be carried out of students/families as well as education providers
- Greater opportunity for students/parents to participate in audit/feedback processes in relation the Standards generally
- Increased information on individual schools websites about the Standards
- Inclusion of question about Standards in the mandatory bi-annual NSOS undertaken by individual schools and education providers
- Demonstrable action taken in accordance with responses to NSOS survey question about Standards
- Improved mechanism for appeal for student/family about education issues
- Address issue of discouraging/withdrawing students from internal/statewide/national assessments
- Reasonable adjustments be utilised as the rule where required to provide education on the same basis, rather than the exception
- Incentives be provided to education providers which provide professional development opportunities in the Standards and other education areas for students with disability
- Reward be provided to education providers which can demonstrate through measures other than self –assessment that they have achieved improvements in the implementation and achievement of the objects of the Standards
- Acknowledgement of unacceptable restrictive practices and development of alternative and acceptable practices to reduce episodes of and feelings of victimisation and harassment
- Work be undertaken to improve the working partnership between education providers and students/families
- Complementary legislation or regulations be enacted to enable the Standards to be strengthened as a tool for the genuine undertaking to eliminate discrimination
- Development of a range of formalised mechanisms to bring together education providers and families in order for the educational goals to be met and the objects of the Standards achieved

- Provision of a dedicated advocacy capacity for students and parents which is recognised and accepted by education providers

### ***3. Examine progress with the implementation of the Government's response to the 2010 Review of the Standards.***

DDWA and PWdWA acknowledge the work by Governments in implementing a range of initiatives designed to assist students with disability particularly in recent years.

Our view is that Government and education providers are aware of a lot of this work designed to assist and support students with disability and education providers, but that the primary stakeholders in education – the consumers – students and their families – have not been put at front and centre of the communications of new initiatives and as such are unaware of much of the work which has been done, which is being done, and of their rights.

We see a significantly greater collaboration than currently exists between education providers and their primary stakeholders as the key to improved understanding and knowledge, elimination of discrimination, provision of education, improved relationships, reciprocity and ultimately improvement of outcomes.

Our recommendations we believe would further enhance Government's capacity to measure the progress of the implementation of their response to the 2010 Review of the Standards as well as providing additional recommendations which would improve the implementation and measure of the success of the achievements of the Standards' objects.

Our organisations would welcome further engagement and involvement in this important work.

DDWA and PWdWA look forward to the Government's next response to the Review of the Standards.

**June 2015**