

People with Disabilities WA
individual & systemic advocacy



Submission

2020 Review of the Disability Standards for Education 2005

Australian Government, Department of Education, Skills and Employment

People with Disabilities (WA) Inc. (PWdWA) would like to thank the Australian Government, Department of Education, Skills and Employment for the opportunity to provide comment for their review of the Disability Standards for Education 2005.

PWdWA is the peak disability consumer organisation representing the rights, needs and equity of all Western Australians with disabilities via individual and systemic advocacy.

PWdWA is run BY and FOR people with disabilities and, as such, strives to be the voice for all people with disabilities in Western Australia.

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People with disabilities WA (PWdWA)

Since 1981 PWdWA has been the peak disability consumer organisation representing the rights, needs, and equity of all Western Australians with a physical, intellectual, neurological, 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.

Introduction

PWdWA welcomes the opportunity to provide comment to the Australian Government on the effectiveness of the Disability Standards for Education 2005 (DSE) in ensuring that students with disability can access education on the same basis as students without disability. PWdWA receives both state and federal funding to provide advocacy around issues experienced by the community, including issues with education institutions.

As the peak consumer voice for people with disability in Western Australia (WA), our submission is compiled on the experiences of people with disability, their families, and carers. Our responses are also informed through PWdWA collaboration with other advocacy and disability organisations. We have provided case studies where appropriate to furnish our statements.

People with disabilities fair access to quality education is enshrined in both the United Nations Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities. PWdWA contends that the DSE have not been effective in reducing the discrimination faced by students with a disability in education settings in WA. Our work in education includes advocating with and on behalf of individuals and their families who have experienced difficulties in their involvement with education institutions 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

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engaging the services of advocates seek some equality in representation alongside education providers when attempting to resolve issues. In the five years since the 2015 review of the DSE, PWdWA has supported over 140 individuals with education related issues.

This submission also provides recommendations that PWdWA strongly urges the Australian Government to consider. These recommendations have been developed as a result of issues brought to our attention through our individual advocacy work and systemic education work.

This submission will be separated into two parts:

Section 1: Summary of Recommendations

Section 2: Highlighted Issues

Section 1

Recommendation 1: Information about the DSE should be provided in a centralised location in range of alternative formats such as Auslan and Easy English

Recommendation 2: A framework of key indicators of practice that demonstrates compliance with the DSE be developed through co-design with people with a disability

Recommendation 3: Federal Government should work with states and territories to require education institutions to provide information about the standards on their websites, and in ongoing communication to students and relevant stakeholder e.g. parents

Recommendation 4: Increase awareness raising activities to ensure that students with disabilities and their supporters are aware of the DSE and how to use them

Recommendation 5: Federal Government should work with states and territories to introduce a requirement for education personnel to complete training on the DSE

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Recommendation 6: Provide clear information about relevant legislation linked to the DSE, including how state, federal and territory discrimination laws interact with the DSE.

Recommendation 7: Introduce compliance mechanisms to monitor the implementation of the DSE. This could be linked to the NCCD for primary and secondary schools and the Tertiary Education Quality and Standards Agency

Recommendation 8: Information on compliance issues and complaint decisions be included as part of centralised information made available about the DSE

Recommendation 9: The DSE be amended to include a standard relating to complaints

Recommendation 10: Additional advocacy funding be provided for education advocacy services. Advocacy services could be funded to both provide education/awareness raising around the DSE as well as advocacy to help with the resolution of individual issues.

Section 2

PWdWA believes that the DSE are for the most part a good framework for promoting equal access and participation for students with disabilities. The success of that framework in WA however is being let down by a lack of compliance mechanisms, insufficient guidance and incentive for embedding practice, and a lack of knowledge about the standards by both education institutions and those who are supposed to benefit from them. We do, however, acknowledge that there are individual schools and educators who operate with the DSE embedded in everyday practice and where a culture of inclusion is clearly evident.

Accessing and Understanding the DSE

For the DSE to be successful in their goal of ensuring equal access and participation for students with disabilities they must be both easy to find and understand. In PWdWA's experience many parents and students who seek our support are not aware of the DSE. Information about the DSE can be found across various websites including the Nationally Consistent Collection of Data on School Students with

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Disability (NCCD) [website](#), the NDCO [website](#) and the Department of Education, Skills and Employment [website](#). PWdWA notes that these websites only offer Plain English in a downloadable booklet, there is no Easy English and only the NDCO website has Auslan.

PWdWA supports the wording of the Standards but we are concerned about 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 educational institution has helped eliminate discrimination. This demonstrates that reasonable adjustments and unjustifiable hardship are being interpreted and applied differently from one institution to the next. The 'in practice' guidance currently provided is not particularly comprehensive as a guide for students, or parents about what it looks like when the DSE has been embedded in everyday practice. We also note that the materials are tailored towards primary and secondary schools and don't provide much guidance for tertiary and RTO organisations.

A review of the WA Department of Education website shows no reference made to the DSE including on their 'Children with special education needs' page. Many WA primary and secondary school websites also do not reference the DSE in the information they provide online, nor disability in general. Given parents will often look to schools and the state education department for information it is not surprising that many parents of students with disabilities are not aware of the standards. PWdWA does acknowledge WA tertiary education institutions have information on their websites about access, inclusion, and the DSE. PWdWA believe this difference is reflective of the fact that tertiary institutions register and are accredited by an independent national quality assurance and regulatory agency. However, it does not necessarily translate across to students being aware of the standards.

In addition to students and parents being unaware of the standards, PWdWA has found that some education institutions are unaware of the DSE and their obligations. This is concerning because for the DSE to achieve their goal they should be embedded into the everyday practice of an institution, which is not possible if they are not aware of them. The NSW Department of Education has recently mandated

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training for all personnel on the standards. This is a promising step forward and should be adopted nationally.

Recommendation 1: Information about the DSE should be provided in a centralised location in range of alternative formats such as Auslan and Easy English

Recommendation 2: A framework of key indicators of practice that demonstrates compliance with the DSE be developed through co-design with people with a disability

Recommendation 3: Federal Government should work with states and territories to require education institutions to provide information about the standards on their websites, and in ongoing communication to students and relevant stakeholder e.g. parents

Recommendation 4: Increase awareness raising activities to ensure that students with disabilities and their supporters are aware of the DSE and how to use them

Recommendation 5: Federal Government should work with states and territories to introduce a requirement for education personnel to complete training on the DSE

Complaint trends

The following complaint areas have been identified through anecdotal information, collaboration with other organisations and individual advocacy cases. They highlight that the DSE have not yet met their goal of ensuring equal access and participation for students with disabilities.

Primary and Secondary Education – issues with participation

Although schools are required to create Individualised Education Programs (IEPs) in a collaborative way, making reasonable adjustments for students, the experience of many parents supported by PWdWA in primary and secondary settings is discouraging. We have seen many examples of schools not providing flexible responses to students needs, often failing to work collaboratively with parents and ignoring recommendations by therapists. In some cases, schools have determined that a 'plan' is not needed meaning that there is no documentation to demonstrate what the needs of the student are and how they will be supported. In other cases,

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the adjustments being made are not reflective of the student's needs. Restrictions or inappropriate responses may also be put in place for students with a disability rather than reasonable adjustments. For example, students being restricted from accessing school activities such as sports, camps etc. These situations clearly do not meet the expectations set out in the standards.

PWdWA has also found that complaints often relate to schools failing to properly implement plans. This can be due to several factors including lack of training and knowledge as well as actual and/or perceived lack of resources and capacity. In many of these cases children are being labelled by schools as 'difficult' because the lack of appropriate supports lead to 'behaviours' resulting from unmet needs. We acknowledge that the response to 'behaviours' occurs on a continuum and that some schools are more contemporary in their understanding of behaviour as unmet needs. However, PWdWA as an advocacy service is often dealing with schools who tend to have repressive and punitive practices.

The result of issues with plans and failures to make a reasonable adjustment include impacts on academic performance and mental wellbeing as well as suspension, expulsion or parents withdrawing students to transfer to a new school or home-school. Parents may even be told by the school that they think the child will be 'better off elsewhere' which is seen as encouragement to withdraw their child. This creates further isolation and impacts on students' access to quality education.

Case Study: Nick

Nick is attending secondary school and occasionally requires the use of a wheelchair due to experiencing fatigue because of his disability. Nick has been denied the use of his wheelchair by his teacher and it has been used to carry bags and other items. Nick's parents advised their Advocate that this was only one of many issues they were having with the school. Nick's mother had tried to address the issue directly with the school as well as the department of education. Because of a lack of response to their complaints, Nick's parents were looking at home schooling him because they felt like they had no other choice.

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Schools of Special Education Needs (SSEN)

SSEN funding can be accessed by public schools to assist them to support students with disabilities. Access to SSEN funding is at the discretion of the individual primary and secondary school in WA. We note that some primary schools do not see the value in early intervention to help prevent educational challenges in later years. The SSEN services primary goal is to support the school and there is no requirement for the person determining what supports the school will receive to consult with parents or carers. Funding is allocated to the school, not the individual, and it is at the discretion of the school principal as to how the funding is implemented. For example, Education Assistant (EA) hours are often shared between students meaning that if some students have a high level of need others may miss out. The result of this is that there is little transparency and decision-making power for students and parents regarding the supports they receive through the SSEN program.

Additionally, the criteria for accessing the SSEN funding and Departmental policy can be a barrier to accessing additional supports in the school environment. While the definition of disability is consistent with the NCCD, the specific diagnosis thresholds can be problematic. For example, a kindergarten student who required significant teaching and learning adjustments had their diagnosis of Global Development Delay removed despite still clearly requiring one-to-one support in the classroom. This meant that EA time for the entire classroom was reduced and both this student and other children in the class were disadvantaged as the EA hours had to be stretched further. Additionally, obtaining a diagnosis for a child can be a lengthy process and SSEN funding is not available without a diagnosis. For example, the Department of Education previously held that a state specific process was required for a student's diagnosis of Autism to be recognised. The waitlist for diagnosis in WA was lengthy and this meant that interstate students who had a diagnosis could not have that diagnosis recognised and were not eligible for SSEN support. This matter was resolved through complaints and advocacy efforts but highlights how policies can be a barrier to accessing these supports.

Access to supports such as Speech Therapy, Occupational Therapy and School Psychologist to support with diagnosis in public schools is limited. For example, School Psychologists only work at schools 1-2 days per week and have several

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schools in their catchment areas. This means that meetings, observations, and assessments would all take a long time and all learning and teaching adjustments, and support need to be provided by existing classroom teachers and EAs who may already be under resourced.

Parents have no ability to apply for SSEN funding if a school decides it is not required. They are not the client of the SSEN team, and as such are not privy to what funding is allocated or how it is distributed by the school. This means decision making about educational supports is entirely out of parents' control and there are no formal mechanisms they can access to appeal decisions other than a complaints process. The result of this is that many of the students we have supported over the years have not had access to adequate SSEN funding. As mentioned above this can result in 'behaviours' which lead to suspensions, expulsions and parents pulling children from schools.

Case Study: Mario

Mario is attending high school and has a neurological condition which results in him requiring a number of adjustments to his classroom setting. When Mario's mother contacted PwDWA she had already been waiting 10 months for an IEP to be finalised and the school to access SSEN funding to support Mario. The school had applied for SSEN funding but stated that the application had been declined and had not proactively followed up on this despite the clear need for assistive technology and adjustments to be made to enable Mario's participation. Even with the help of an Advocate it took a further 9 months for an IEP to be finalised and SSEN funds to be accessed. Mario's mother found the process highly frustrating. The SSEN application required additional evidence to be provided despite thorough information from Mario's allied health professionals being provided. Despite the progress made Mario continued to have issues with his IEP being implemented properly and accessing adequate supports.

Tertiary and RTO institutions

PwDWA is anecdotally aware of issues around support plans for students with a disability in WA universities. We know that in some universities the process of applying for and being granted a support plan is exceedingly slow, in some cases

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being approved after the Census Date. This means that students have not had any reasonable adjustments applied to their units. While universities may allow students to defer units without costs due to the delay it can impact on the length of time taken to complete courses as some units are pre-requisites or only run in certain semesters. Additionally, implementation of support plans in universities is often up to individual unit coordinators and varies depending schools/faculties and individuals. In practice we know that this results in a varied level of the quality of support available and impacts on academic performance and mental wellbeing.

PWdWA has also supported individuals who have accessed training/education through an RTO or TAFE where they found it difficult to access reasonable adjustments. On several occasions, students faced difficulties completing practical assessment portions of their courses. Reasonable adjustments were not applied to decisions about where and how placements would be completed. In these situations, students either could not complete or failed their placements. This was despite the educational institution being aware of the student's disability requirements and arranging the placement on behalf of the student.

Case Study: Linda

Linda, a student with autism, was attending TAFE in WA. Linda required support with note taking in her classes and approach the Disability Support Service at TAFE to arrange a Learning Support Plan. It was acknowledged that Linda needed one-to-one support in class to participate but the TAFE considered it was not reasonable for them to provide this support. Linda sought to find someone who could attend class with her to take notes but was told by the TAFE that they would not allow someone who was not a student into the classroom. It took Linda and her Advocate 5 months to resolve her complaint and have access to in-class supports.

Lack of Communication

PWdWA has provided advocacy for many complaints where lack of communication between primary/secondary schools and parents is a key issue. Many parents feel that they are not being engaged early around issues that may arise with their children and are blindsided when the school calls a meeting about their child's 'behaviour'. Most of the parents we support feel that their concerns are not being

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heard, and that they are having to fight to get their children the education they deserve. Parents often feel like their expertise about their child's needs, and that of the therapists that support their children, is ignored, or excuses are made as to why the school cannot make a reasonable adjustment for their child.

There is an inherent power imbalance in many meetings with schools and this increases the higher through the WA Education system you take your complaint. Parents often express that meetings feel adversarial which is part of the reason they seek advocacy support. Advocates have attended meetings where up to 4 people from the school were present, and in some cases the parent was not advised as to who would be attending. Overall, the experience of PWdWA is that for many of the complaints we have supported the principles of consultation, communication or collaboration are not applied.

Case Study: Andy

Andy was a young child with Autism. Andy's school used a communication book to update his mother about any issues with his education supports. Andy's mother would often read that Andy had 'a bad day' in the book and would offer to meet with the school to discuss issues. The school would decline her requests and downplay his behaviour as not serious enough to warrant a meeting. Andy's mother was called into the school for a meeting and informed that there had been several incidents and that Andy was being suspended. Andy's mother was upset at not being given the opportunity to discuss these incidents prior to the suspension to see what support could be implemented to address the school's concerns. Because of continued issues with the school, Andy's mother enrolled him in a new school where they were willing to make the reasonable adjustments necessary to support Andy's education.

Transport

PWdWA has supported families who face difficulties with getting their child to school due to School Bus Service policies. Parents will often try to enrol children in schools that they feel will best support the needs of the child. In some instances, this is not their local school. School Bus policies do not consider the needs of the child or family around enrolment preference and generally do not allow for out of area pick-

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ups. Advocacy has been able to achieve 'out of policy' decisions but these are often time limited.

Additionally, PWdWA has supported families where school bus drivers have refused to transport students because of their disability. This includes drivers complaining that students with disabilities are 'noisy' and 'distracting'. In one case the student was located regionally. Despite several solutions being proposed such as their mother or a support worker travelling on the bus, the student has still not been given access to the bus. Because the child was not attending school, an investigation into the parents was opened. The father now has to spend up to 3 hours a day transporting his child to school, which is impacting on his ability to maintain his employment.

Although transport issues technically fall under the Transport Standards, it clearly impacts on student's ability to access the school of their choice. It also highlights that it is important to consider how the DSE and Transport Standards work together.

Case Study: Eloise

Eloise was a young girl with an intellectual disability transitioning from primary to secondary school. Eloise's family had identified an out of area high school that they believed would best support Eloise's secondary education. The high school had specialised programs in Eloise's areas of interest and had a good reputation working effectively with children with intellectual disabilities. However, because their local secondary school believed they would be able to sufficiently support Eloise's needs, she was not able to access school transport to travel to her school of choice.

Advocates worked with the family and the local member of parliament to secure an 'out of policy' decision however this was time limited and did not actually resolve the issue.

Bullying and Harassment

The PWdWA 2015 report *Behind Closed Doors* provides information about violence abuse and neglect experienced by students with a disability in WA schools. The report found complaints about physical and sexual assault as well as segregation, isolation, and neglect. A significant finding was that the education system failed to support or enable parents to interact with external investigation mechanisms like the

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police. PWdWA maintains that students with a disability are still more likely to experience abuse, violence, bullying and harassment in WA schools. We continue to receive complaints from parents about bullying and harassment occurring in primary and secondary education settings. Bullying and harassment is both from educators and other students. Parents are also disappointed with the response from schools, the education department, and external bodies such as the police. While it is important that schools acknowledge that student perpetrators often need support, parents feel that the safety and wellbeing of victims is not prioritised. Parents have withdrawn their children from school due to concerns for their wellbeing and safety.

Case Study: Paul

Paul experienced regular bullying from his peers because of his disability. On more than one occasion he had been physically harmed. His mother had raised her concerns with the school repeatedly. Their response had been to suggest Paul move to a different classroom. Paul's mother felt that the school brushed off her concerns and was very worried for the emotional and physical wellbeing of her son who had expressed suicidal ideation. PWdWA supported Paul's mother to raise her concerns again with the school. While the situation improved for a little while, it again escalated, and the resulting injury required hospitalisation. Paul's mother approached the police to see if they could provide any assistance with the continued assaults and they advised that it was the school's responsibility. After the school failed to address the issue to the mother's satisfaction, she tried to raise the issue with the state education department. As of a year later, Paul is still experiencing bullying and his mother is now looking at asking for a discretionary decision to transfer schools for his safety.

We reiterate Recommendations 2 and 5 in regard to ensuring education institutions comply with the DSE.

Recommendation 6: Provide clear information about relevant legislation linked to the DSE, including how state, federal and territory discrimination laws interact with the DSE.

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Recommendation 7: Introduce compliance mechanisms to monitor the implementation of the DSE. This could be linked to the NCCD for primary and secondary schools and the Tertiary Education Quality and Standards Agency

Recommendation 8: Information on compliance issues and complaint decisions be included as part of centralised information made available about the DSE

Effectiveness of complaints

We acknowledge that some education institutions are very responsive to complaints. Where an institution undertakes a collaborative complaints process and is committed to making things work, great results can be achieved for students. However, complaints processes and policies in primary and secondary and some RTO and TAFE settings are often lacking and can be very adversarial. Often there are no formal mechanisms to appeal decisions and students and parents are forced to engage in ill-defined complaints process to try and resolve issues. The process in primary and secondary institutions usual involves raising the issue with the classroom teacher, then the principal, then the school board and then the state education department or State Ombudsman (private schools). Parents often do not realise that they are able to raise issues of discrimination with the Equal Opportunity Commission or the Australian Human Rights Commission. Even if they are aware, they are often so worn out from a drawn-out complaints process that they feel it is easier to move their child to a different school, or home school them. In our experience it can take over a year for some issues with primary and secondary schools to be resolved to a satisfactory level.

Similarly, universities, TAFE and RTO's often have several complaints layers that a student will have to go through and throughout that process information is not always provided about the Equal Opportunity Commission or the Australian Human Rights Commission.

Many parents and students also feel that they achieve a better result with an Advocate present. While universities often have student guild services who can support student complaints, this same dedicated support is not available in other settings. Students and parents feel that access to an Advocate levels out the balance of power and ensures that their voice is heard. Advocates often have the

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tools and information needed to be able to articulate how an education institution is not meeting the DSE. In this sense, Advocates are a key tool in promoting awareness and understanding of the DSE for students and parents. There is also a perception by students and parents that an Advocate adds a level of accountability to the proceedings and education institutions are more likely to take complaints seriously if there is a third-party privy to their response.

The fact that there continues to be ongoing complaints received by advocacy agencies, the Equal Opportunity Commission and the Australian Human Rights Commission, is a clear indicator that the standards are not working to the full extent possible. It demonstrates that complaints are not an effective mechanism to ensure compliance with the DSE.

Recommendation 9: The DSE be amended to include a standard relating to complaints

Recommendation 10: Additional advocacy funding be provided for education advocacy services. Advocacy services could be funded to both provide education/awareness raising around the DSE as well as advocacy to help with the resolution of individual issues.