



28 April 2011

Review of the Disability Standards for Education 2005
Department of Education, Employment and Workplace Relations
Location C50MA5
GPO Box 9880
CANBERRA ACT 2601

Dear Minister,

Review of Disability Standards for Education 2005

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation established in 1977. We offer free legal advice, referral and casework to disadvantaged people living in the City of Sydney, Botany Bay and Leichhardt local government areas.

RLC has a particular focus on human rights and social justice. We provide community legal education and advocate for the reform of inequalities in laws, the legal system, administrative practices, and society as a whole. We prioritise the needs of particular disadvantaged individuals, including people with disabilities (particularly mental health and drug and alcohol affected people), Indigenous individuals, young people, and non-English speaking individuals.

Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers provide advice and conduct case work, including test case litigation, with the view to providing thorough leadership and cutting edge law reform in each of these areas for the benefit of the community.

2. RLC's work in Disability Discrimination

RLC has a long history of working in disability discrimination, and a significant proportion of our clients have some form of mental illness.

RLC is one of the lead agencies working on the NGO Shadow report to the United Nations on the Convention on the Rights of People with Disability.

RLC is also one of the key authors of the submissions by the National Association of Community Legal Centres to the Commonwealth Attorney General on the consolidation of federal discrimination laws.

3. Our View in Summary

It is RLC's position that the Disability Standards for Education 2005 ('the standards') are not meeting their aims and have not had a significant impact on access to education for students with disability. The two major reasons for this are a lack of awareness around the standards, and difficulties in monitoring and enforcing the standards.

4. Responses to Selected Questions from the Standard Response Form:

Question 1. Providing clarity

In our experience, the standards are confusing, repetitive and are directed to processes rather than outcomes. Our clients are often confused as to what constitutes consultation, participation or adjustments. In the absence of any judicial decisions in relation to the meaning of these terms, we experience difficulty in advising them as to what they mean.

In this regard, the standards have been much less useful in providing clarity than the Transport or Access to Premises Standards, which provide precise detail as to what is required to discharge obligations under the standards.

Question 5. Awareness and recognition

In our experience, education providers are not well versed in the standards and have little understanding of what they mean. Not surprisingly then, parents and students have often never heard of the standards. Our experience shows that generally parents need to be well versed in advocacy skills and to have sought advice from disability advocates to be able to use the standards.

Case study

Maria is from a culturally and linguistically diverse background. She has a son with a number of disabilities requiring substantial care. She is the primary carer for her child. It is a struggle to get him ready and to school on time. She has identified he has certain equipment needs and has problems with air quality in his classroom. Adjustments are requested and a teacher's aide has been provided but Maria observed the adjustments have not been made. She also observed the teachers aide allocated to him is in fact doing photocopying for the whole class. On one occasion her son was not assisted to the toilet and was left in his soiled clothes. Maria complained to the school about the treatment and was understandably angry. The school called the police to escort her from the school. Maria was banned from entering the schools premises. Maria decided she has no confidence in the school, believes the schoolroom will make her son sick and decided to keep him home. She also lodged a complaint of disability discrimination. The school made a report to child welfare authorities, who appeared to consider that lodging a discrimination complaint was evidence of a non-cooperative and confrontational nature.

Often the first a parent knows of the difficulties being faced by a child will be a suspension or disciplinary matter. A child with disability may have great difficulty, because of the nature of their disability, in identifying what they are experiencing and where they may need adjustment. The schools need to be proactive in identifying issues and involving the parents.

Without a program of continuous training for principals and teachers around the standards, and the provision of information to parents, this will not occur.

Question 6. Compatibility with current education system

In our view registered training organizations may not be covered by the standards. We are aware of a few cases where registered training organizations have argued that they are not. As for-profit providers of education they certainly should be. The standards should be amended to clarify this point.

Question 7. Other comments

Monitoring and Enforcement

In our opinion, one of the most significant reasons that the education standards are not meeting their aims is that the onus of monitoring and enforcing them lies on the student with a disability.

Formal complaints through the *Disability Discrimination Act 1992* are an inappropriate mechanism for resolving education complaints. Often students and their parents are eager to maintain their relationship with the school and are therefore reluctant to bring formal complaints which may risk that relationship.

In many cases, the student simply requires a reasonable adjustment to enable them to participate on an equal basis with students without their disability. Legal costs, the stress involved, and the fact that many students would rather spend their energy on their study rather than a court case means that the Federal Court is not the appropriate jurisdiction to resolve these complaints.

The standards also do not address systemic discrimination. In general, discrimination law remedies are compensatory in nature only and the amount of compensation awarded tends to be comparatively low to that awarded in other areas of law. In our experience, the relatively small sum of damages does little to prevent further discriminatory practice. It is also rare for policy change to be part of the settlement or court finding. In circumstances where a settlement provides for systemic outcomes, such as training or policy changes, conciliated agreements are often confidential, which means the outcome cannot be used by other people as a precedent to seek improvements more generally. Court decisions are also often applicable to the facts of the case only.

An alternative enforcement mechanism is required. We recommend the establishment of a separate enforcement agency similar to the Fair Work Ombudsman, which would be responsible for working with education providers to ensure they are meeting the requirements of the standards.

Convention on the Rights of People with a Disability (CRPD)

Since the passage of the standards, Australia has ratified the Convention on the Rights of People with Disability. The standards must therefore be reviewed to incorporate the requirements of the CRPD, in particular, Article 24.

Evidence to support a request for adjustments

More specifically, the standards require clarification as to what evidence is required to prove a disability or the adjustments required, and who pays for it. In our experience, schools have often questioned or not followed an original treating practitioner's report. The costs involved in obtaining reports, and the uncertainty around their acceptance, can be a reason why parents cease pressing for adjustments.

Case Study

The NSW Board of Studies requires that all medical reports in support of adjustments for the School Certificate be current. Sue has a daughter with Williams Syndrome, a congenital disability. For Sue that meant organizing an appointment with a psychiatrist and a report costing \$300, an occupational therapist appointment and report costing \$300, an appointment with an optometrist specializing in learning disabilities costing over \$100. Other medical advisers had to be seen and asked for updated reports and support letters. An incorrect date on one report addressed specifically to the Board of Studies was seen by the school as potentially fatal to the report being accepted. All of this required taking the child out of school and Sue being away from work. There were already numerous existing detailed medical reports for this child, but the Board of Studies still required current reports.

We would welcome the opportunity to further discuss any of the points raised in our submission with you.

Yours sincerely

REDFERN LEGAL CENTRE



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Chief Executive Officer



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