

Dyslexia fact sheet:

Dyslexia and the law in Australia

Does dyslexia exist?

Dyslexia is a lifelong condition that occurs across a broad spectrum. Dyslexia can not be cured. Dyslexia is the most common learning difficulty and most recognised reading disorder and accounts for approximately 85% of reading problems.

"Dyslexia is a specific learning disability that is neurological in origin. It is characterised by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge."

International Dyslexia Association and Australian Dyslexia Association <http://dyslexiaassociation.org.au/index.php?page=what-is-dyslexia>

"Converging evidence from a number of lines of investigation indicates that dyslexia represents a disorder within the language system and more specifically within a particular subcomponent of that system, phonological processing. Recent advances in imaging technology, particularly the development of functional magnetic resonance imaging (fMRI), provide evidence of a neurobiological signature for dyslexia. The brain systems for reading are malleable and their disruption in children with dyslexia may be remediated by provision of an evidence-based, effective reading intervention."

<http://www.ncbi.nlm.nih.gov/pubmed/16925477>

"Strong evidence has now emerged for the presence of genes influencing developmental dyslexia at several chromosomal loci and for at least one of these, there is evidence implicating specific genes."

<http://www.nature.com/ejhg/journal/v14/n6/full/5201575a.html>

DSM-5 considers Specific Learning Disabilities to be a type of Neurodevelopmental Disorder that impedes the ability to learn or use specific academic skills (e.g., reading, writing, or arithmetic), which are the foundation for other academic learning. The learning difficulties are 'unexpected' in that other aspects of development seem to be fine.

The DSM-5 uses the term Specific Learning Disability, and then requires a second code to specify the nature of the disability - Specific Reading Disorder, Specific Math Disorder and Disorders of Written Expression. It also states in that same section: "Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities." (p.67, DSM-5) The DSM-5 is the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition and is published by the American Psychiatric Association (APA).

http://dyslexiahelp.umich.edu/sites/default/files/IDA_DSM-5%20Changes.pdf

"Briefly summarized, the four diagnostic criteria are: (adapted from APA, DSM V, 2013)

A. A persistent difficulty learning academic skills for at least 6 months despite intervention targeting the area(s) of difficulty. Many schools use a RTI model of academic skill assessment and progress monitoring to determine the effectiveness of interventions.

The areas of documented academic skill difficulties include:

1. Word decoding and word reading fluency
2. Reading comprehension
3. Spelling
4. Writing difficulties such as grammar, punctuation, organization, and clarity
5. Number sense, fact and calculation
6. Mathematical reasoning

B. The affected academic skills are substantially below expectations given the individual's age and result in impaired functioning in school, at work and in activities of daily living.

C. LD is readily apparent in the early years, however it is not to be diagnosed until the onset of school years; in some individuals the disorder is not apparent until the onset of a demand for higher-level skills.

D. The academic and learning difficulties occur in the absence of:

1. Intellectual Disabilities
2. Visual or hearing impairments
3. Mental disorders (e.g. depression, anxiety, etc.)
4. Neurological disorders
5. Psycho-social difficulty
6. Language differences
7. Lack of access to adequate instruction"

<http://www.ldworldwide.org/educators/1106-warm-demander-pedagogy-reaching-students-through-care-and-insistence>

Is dyslexia covered under the Disability Discrimination act 1992?

"The definition of 'disability' in the Disability Discrimination Act 1992 (DDA) is sufficiently broad as to include dyslexia within the meaning of that term as outlined in recommendation 1. Dyslexia would therefore be covered by the provisions of both the DDA and the Disability Standards for Education 2005 made under that Act.

The Disability Standards for Education 2005 clarify the obligations of education and training providers to ensure that students with disability are able to access and participate in education without experiencing discrimination.

All Commonwealth, State and Territory Governments, as well as all government and non-government education authorities are required by legislation to comply with the Disability Discrimination Act 1992 and the Disability Standards for Education 2005."

Australian Government Response to Working party on Dyslexia

http://www.dss.gov.au/sites/default/files/documents/09_2012/response_to_dyslexia_working_party_report_online_version.doc#_Toc331669022

"Anti-discrimination law covers a wide range of disabilities and health problems. These include the following:

A learning or cognitive disability such as dyslexia."

Anti-discrimination Board of NSW fact sheet <http://>

www.antidiscrimination.lawlink.nsw.gov.au/agdbasev7wr/adb/documents/pdf/

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DISABILITY DISCRIMINATION ACT 1992

<http://www.comlaw.gov.au/Details/C2013C00022>

"disability, in relation to a person, means:

(f) a disorder or malfunction that results in the person **learning differently from a person without the disorder or malfunction; or**

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

(h) presently exists; or

(i) previously existed but no longer exists; or

(j) may exist in the future (including because of a genetic predisposition to that disability); or

(k) is imputed to a person.

To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

education provider means:

(a) an educational authority; or

(b) an educational institution; or

(c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers referred to in paragraph (a) or (b).

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(1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability:

(a) by refusing or failing to accept the person's application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability:

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

(2A) It is unlawful for an education provider to discriminate against a person on the ground of the person's disability:

(a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or

(b) by accrediting curricula or training courses having such a content.

(3) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability."

HUMAN RIGHTS COMMISSION

<https://www.humanrights.gov.au/dda-guide-getting-education>

"Educators must offer a person with a disability the same educational opportunities as everyone else. This means that if a person with a disability meets the necessary entry requirements of a school or college he or she should have just as much chance to study there as anyone else.

Educators must base their decisions on a person's ability to meet the essential requirements of the course. They should not make assumptions about what a person can or cannot do because of a disability."

COMMONWEALTH DISABILITY STANDARDS FOR EDUCATION 2005

"The Disability Standards for Education 2005 ('Education Standards'), also formulated under s 31 of the DDA, came into effect on 18 August 2005. The purpose of the Education Standards is to 'clarify, and make more explicit, the obligations of education and training

service providers under the DDA and the rights of people with disabilities in relation education and training'.[352]

The Education Standards apply to 'education providers', defined to include:[353]

educational institutions, meaning a school, college, university or other institution at which education or training is provided;

persons or bodies administering an educational institution; and

organisations whose purpose is to develop or accredit curricula or training courses used by other education providers.

The above categories include Commonwealth, State and Territory governments and agencies, as well as private organisations and individuals.[354]

The Education Standards cover the following areas relevant to education:

enrolment;

participation;

curriculum development, accreditation and delivery;

student support services; and

elimination of harassment and victimisation."

"Perhaps the most significant feature of the Education Standards is the introduction of a positive **obligation on education providers to make 'reasonable adjustments' to accommodate the needs of students with disabilities.**[355] **The Standards also impose an obligation on education providers to consult with affected students or their associates in relation to such adjustments.**[356]

https://www.humanrights.gov.au/federal-discrimination-law-chapter-5-disability-discrimination-act#5_2_5b

"Under the Commonwealth Disability Standards for Education 2005, all education providers are required to make sure that every student with disability is able to access and participate in education on the same basis as students without disability.

This includes a requirement to make or provide adjustments for the student where needed so that they have the same experience and opportunities as their peers without disability."

"(3) A person with a disability is able to participate in courses or programs provided by an educational institution, and use the facilities and services provided by it, on the same basis as a student without a disability if the person has opportunities and choices in the courses or programs and in the use of the facilities and services that are comparable with those offered to other students without disabilities."

"In assessing whether a particular adjustment for a student is reasonable, regard should be had to all the relevant circumstances and interests, including the following:

- (a) the student's disability;
- (b) the views of the student or the student's associate, given under section 3.5;
- (c) the effect of the adjustment on the student, including the effect on the student's:
 - (i) ability to achieve learning outcomes; and
 - (ii) ability to participate in courses or programs; and
 - (iii) independence;
- (d) the effect of the proposed adjustment on anyone else affected, including the education provider, staff and other students;
- (e) the costs and benefits of making the adjustment."

"The education provider must take reasonable steps to ensure that the course or program is designed in such a way that the student is, or any student with a disability is, able to participate in the learning experiences (including the assessment and certification requirements) of the course or program, and any relevant supplementary course or program, on the same basis as a student without a disability, and without experiencing discrimination.

If a student is enrolled in the course or program, the provider must:

- (a) consult the student, or an associate of the student, about whether the disability affects the student's ability to participate in learning experiences of the course or program, or any relevant supplementary course or program; and
- (b) in the light of that consultation, decide whether an adjustment is necessary to ensure that the student is able to participate

If a specialised support service is necessary for the student to be able to participate in the activities for which he or she is enrolled, and is of a kind that is provided by the education

provider, the provider must take reasonable steps to ensure that the student has access to the service (but may arrange for it to be provided by another person or agency)."

[http://docs.education.gov.au/system/files/doc/other/
disability_standards_for_education_2005_plus_guidance_notes.pdf](http://docs.education.gov.au/system/files/doc/other/disability_standards_for_education_2005_plus_guidance_notes.pdf)

School obligations under the Disability Standards for Education Act 2005 and the Disability Discrimination Act 1992 (Adapted from The Australian Curriculum)

<http://www.australiancurriculum.edu.au/studentdiversity/students-with-disability>

The Disability Discrimination Act 1992 and the Standards are intended to give students with disability the same rights as other students, including the right to education and training 'on the same basis' as students without disability.

The Standards apply to education providers, including principals, schools and teachers. Principals and schools can meet their obligations under the Standards by giving consideration to 'reasonable adjustments' to ensure that students with disability are provided with opportunities to participate in education and training on the same basis as students without disability. Before any adjustments are made, 'consultation' takes place between the school, student, and parents or carers.

'On the same basis' means that students with disability are entitled to rigorous, relevant and engaging learning opportunities drawn from the Australian Curriculum and set in age-equivalent learning contexts.

Schools need to comply with the Disability Standards for Education 2005, in regards to consultation, ensuring that there is a team of people who have significant knowledge and understanding of the student, including the student and their family members or carers.

- 'Consultation' can involve the principal, class teachers and support teachers, and can include the professional expertise of therapists and other community service providers.
- The purpose of the 'consultation' is to identify the barriers to a student's learning and any adjustments that could be made.
- 'Consultation' should take place regularly and changes made to adjustments if needed.

- 'Consultation' should continue for the whole time that the student is involved with the school.

An 'adjustment' is a measure or action taken to assist a student with disability to participate in education and training on the same basis as other students. The process of consultation outlined above is an integral part of ensuring that schools are meeting their obligations in relation to 'reasonable adjustments'.

Further resources and clarification of law

<http://www.australiancurriculum.edu.au/studentdiversity/students-with-disability>

<http://www.dyslexiaaustralia.com.au/information-mainmenu-90/38-disability-discrimination>

http://disabilitylaw.org.au/wp-content/uploads/2012/03/Using_DD_Law_NSW.pdf

[https://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/e247d1a7a88786caca2576d4001905cc/\\$FILE/Submission%2074.pdf](https://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/e247d1a7a88786caca2576d4001905cc/$FILE/Submission%2074.pdf)

<https://www.ldaustralia.org/key-papers.html>

<http://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-2-dse.docx>

<http://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-3-parental-engagement.docx>

http://cpancf.com/articles_files/learning_disorders.asp

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