Beyond compliance: ACE and the Disability Standards for Education 2005

by Judy Buckingham and Joseph Graffam

Unjustifiable hardship provisions in the Standards can make it difficult for some people—particularly those with high support needs—to gain access to education, but ACE providers like neighbourhood houses should take up the challenge and become agents of positive change.

The Disability Standards for Education 2005

The Disability Standards for Education are legislated under the Disability Discrimination Act 1992. The Standards require that providers make reasonable adjustment for students with a disability in relation to enrolment, participation in a course or program and in relation to facilities or services. These adjustments must be made in consultation with the student or an associate of the student and be made in reasonable time. The Standards addressed in this paper are those set out in Part 7: Standards for student support services, which state:

- The standards also give students with disabilities rights in relation to specialised services needed for them to participate in the educational activities for which they are enrolled. These services include specialist expertise, personal educational support or support for personal and medical care without which some students with disabilities would not be able to access education and training.

- The Standards further require that even where the provider is not in a position to provide such specialised support needed, the provider must take reasonable steps to facilitate the provision of the services to the student by another person or agency. This is putting the responsibility for support provision of any kind on the education provider. There are, however, exceptions. There is no requirement for any provider to make adjustment that is unreasonable. This includes where the effect of the adjustment on anyone else affected, including the education provider, staff and other students, and the costs and benefits of making the adjustment may be unreasonable.

In addition, where the obligation to make a reasonable adjustment nonetheless imposes unjustifiable hardship on the provider, "it is not unlawful for the provider to fail to comply." It is clear, however, in the Standards that a claim for unjustifiable hardship cannot be made until after reasonable adjustments have first been considered.
Research findings

Research suggests that ACE providers, especially neighbourhood houses, already struggle with the concept of support for people with a disability (Buckingham, 2006) and in view of their limited resources, who should fund the necessary accommodations. Three studies are used here to illustrate this.

1 Neighbourhood house provision

Report on neighbourhood house survey of provision for people with intellectual and psychiatric disabilities.

In 1998 a survey was conducted of provision for people with intellectual and psychiatric disabilities in neighbourhood houses in Victoria. Returns were received from 221 of the 300 houses (73 percent). This was a quantitative study, but space was also given for responses of a qualitative nature and many respondents took that opportunity. Of these qualitative responses, the area of greatest concern was the lack of support available. From the quantitative data, it was shown that only 16.5 percent of people with a disability in adult education classes were always supported if required, 20 percent were never supported and 60 percent were sometimes supported (3.5 percent did not respond to the question).

2 Towards inclusion

In 2004 a study was undertaken to consider the learning and relationships of people with an intellectual disability. This included interviews with 25 participants who were involved with people with a disability in various occupations such as managers, teachers, adult education coordinators and work place trainers. Interviews and observations occurred with 13 pairs of people (where one of each pair had a disability and the other did not) as they worked, learned or took part in recreational activities together. It also involved ethnographic investigation of ten organisations, three of which were ACE providers (their actual identities are concealed, and for the purposes of this article are called Acacia House, Banksia Learning and the Casuarina Centre).

This study found that support provision was mixed. At both Acacia House and Banksia Learning, for instance, support for people with a disability was dependent on whether there were volunteers available or whether the referring agency and/or residential unit could provide support personnel. An Acacia House coordinator stated: ‘Everyone is welcome in the house as long as they’re able to cope with what’s on offer. If they’re not, then they are more than welcome if they’ve got a carer’. And ‘if the tutor is willing to accept (that a person may not have a support worker), the person will come in and the rest of group have to be willing, I guess, to accept as well’. (interview transcript). In practical terms, unless a person could provide their own support their welcome would be qualified, and participation in a class by a person with a disability occurred through the goodwill of others, not by entitlement.

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There seemed to be an underlying confusion as to the role of support workers—were they there to provide teaching support, social support, or act as personal carers? ‘Volunteers were being asked to clean up the students, and they had no training or any background in it, so is it their responsibility? Is it the responsibility of the tutors? Is it my responsibility? Is it the Adult Community and Further Education coordinators?’ (Interview transcript)

At Banksia, there was an expectation (or perhaps a hope, since it was left to individual support workers to decide their role) that support workers provided by the referring agency would take on a direct teaching role as well as deal with personal care issues. Only the Casuarina Centre trained volunteers to be teacher supports for classes, and had clear guidelines for other support roles. Importantly, they preferred people employed as community support workers not to take on direct training or teaching roles.

This study found that, with the exception of the Casuarina Centre, training for volunteers who took on a support role was a matter of chance and past experience. At the Casuarina Centre all volunteers were given written material when they started and were expected, as a matter of course, to attend the biennial training days covering matters to do with teaching and disability. Acacia House was aware of the need for appropriate training, and set up its own one-day conference on the teaching of people with cognitive disabilities in their region. Attendance by volunteers (and teachers) was, however, optional and not all attended.

3 The rest of their lives

This study (Buckingham, 2006) researched the feasibility of brokerage services into further education or employment for people with a disability. Those interviewed included people with a disability and their families, representatives of adult day services and adult education providers. Lack of support was identified as a major issue. Adult day services and families complained that several neighbourhood houses

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would not accept people with a disability unless they could supply their own support person. The day services did not always have staff available to take on this role.

Of the eight ACE providers contacted, two had no disability access, one only ran social activities for people with a disability, and one house gave access only to people with selected impairments. Of the remainder, one would only take people with a disability if they brought an aide with them. Neighbourhood houses complained about the lack of support available from referring agencies; referring agencies would only provide short term support, if they provided any support at all. 'Dumping', that is, leaving one or more people with a disability at a venue with no support, was also reported.

Representatives from TAFE colleges were also interviewed, and while TAFE colleges managed disability support funds such as Futures for Young Adults, some colleges—according to some parents interviewed—used the unjustifiable hardship provisions to reject some people with high support needs. This use of unjustifiable hardship provisions may have been valid, but this is little consolation to parents trying to find education options for their children.

**Issues**

Two recurring issues identified in all three studies were the paucity of support for people with a disability and confusion as to who should supply (and by implication, pay for) it. The introduction of the Education Standards should remove any such uncertainty, and for this and for the restructuring of the Disability Discrimination Act 1992 to apply specifically to education, the Standards are a welcome step towards inclusion of people with a disability into adult education.

The Education Standards, however, have only recently been introduced and their impact is only now being felt by ACE providers. Evidence from the research outlined above suggests that some neighbourhood houses may have difficulties with Standards which not only prohibit the refusal to admit people with specific impairments, but also place the responsibility for finding any support needed on the education provider. An underlying concern is funding. Many people with a disability are in receipt of support funding of some kind through such programs as Futures for Young Adults, Support and Choice or HomeFirst. This funding, however, is rarely managed by either people with a disability or their families. More often, funds are held by a broker, normally their adult day service or a TAFE college. These brokers must also fund some of their own infrastructure costs from these support allowances. As the CEO of one agency explained, although support funding was intended to be individual, in fact 'one person's support (funding) is not a lot of money, therefore groups are favoured' (Buckingham, 2004). That is, it is cheaper to keep people with a disability in groups and settings which do not require individual support personnel, but only one or two support people for a group of people with a disability. These agencies do, nevertheless, have access to an individual's support funding even if only a portion of it is used directly for support. ACE providers such as neighbourhood houses have no access to any individual support funding. If they did, they would be in a better position to not only attract support people but to ensure that support people were appropriately trained.

Some Adult Community and Further Education (ACFE) regional offices in Victoria provide limited money to those providers that they fund to pay for support for people with a disability. Upward adjustments can be made to the unit cost to acknowledge that providing access to people with a disability incurs additional costs.

However, nowhere is there a statement made, as in the UK, where the Learning and Skills Council’s claim was that all support needs for further education colleges should be cost-neutral to the provider (Buckingham, 1999). Support for people with a disability in neighbourhood houses is therefore reliant on the availability of (often untrained) volunteers or an expectation that the person with a disability or their referring agency will provide someone.

The issue of training is also important. The ‘Towards inclusion’ (Buckingham, 2004) study found that although most volunteers were given general induction and training, this did not often include disability awareness. Along with lack of any clear guidelines as to exactly what support role volunteers were playing, this led to frustration on the part of volunteers and teachers and, in some cases, inappropriate approaches to teaching and support.

**Compliance**

The Standards make it clear that selection of people who have specified impairments only, and general statements regarding non-acceptance of people with a disability unless...
accompanied by a support worker, will be unlawful. They state that providers must consult with each person applying regarding reasonable adjustment, and make reasonable steps to facilitate provision of support, either learning support or personal care assistance.

The question of what is reasonable is always going to be debatable and unique to each individual and each provider. However, a practical start would be to communicate and negotiate with both the person with a disability and any referring agency who manages their funds as to what support is actually needed (and many people with a disability either do not need support, or need minimal support), what funding is available for this and who is best placed to provide it. In countries such as Canada and the UK many people with a disability have hands-on control of their own support funding (Duffy, 2003) While this would seem to put the onus on people with a disability to provide support, it does at least mean that negotiation for support is between the providers and provided-for with no middleman who also needs funding.

In the meantime ACE providers are relying on volunteers, where obtainable, to take on a support role. The volunteer contribution could be enhanced by two changes. Firstly, providers should supply volunteer/support workers with clear guidelines as to what their job involves; secondly, they should provide training for volunteers in disability awareness and/or teaching people with a disability. Finding time for these innovations is an issue, but there is at least one education package available which has been devised to train support people on the job (Gawith Villa Inc. 2004).

**Beyond compliance**

There is a danger, firstly, that some providers, especially those not funded by ACPE, may not be aware of the specifics of the legislation. Secondly, some providers may see the unjustifiable hardship clauses and use them as a means to disallow access to education to some people with a disability. Edwards (2003) for instance, considers that unless education institutions recognise that they have a moral mandate to provide equal access, the *Disability Discrimination Act* (and therefore the Education Standards) may be used as a tool for excluding students with a disability through use of the unjustifiable hardship provisions.

Edwards makes a comparison with the US education services which operate under a legislative framework grounded in a rights-based agenda. Under this US framework, educational institutions have no mitigating clauses, and must provide quality support to all students.

Lack of funds to make a reasonable adjustment such as provision of support personnel might easily be counted as unjustifiable hardship. Where a person has high support needs, claiming unjustifiable hardship is already seen as valid in some TAFE colleges which can access an individual's support funding. It is likely to be seen as even more valid for neighbourhood houses which have no such funding access. Unjustifiable hardship provisions, while offering reasonable protection to education providers, nevertheless may prevent people with support needs from accessing education.

The Commonwealth Government legislation and the Victorian Government guidelines, encompassed in the State Disability Plan, have promoted the inclusion of people with a disability into education and the community. Such standards and guidelines are a good start, but without giving people the support they might need to access the community, they are not enough. Unjustifiable hardship is already being used as a means of exclusion. This may be valid and lawful, but it also provides a barrier to some people, especially those with high support needs, gaining access to education.

ACE providers, including neighbourhood houses, are where many people with a disability go for adult education. These providers have always played a community development role. They need now to see themselves as agents of positive change towards ensuring equitable provision of education to people with a disability. If they are going to be subject to these Standards then it is appropriate that they start advocating, for themselves and for the members of their community who have a disability, for money for adequate support for those who need it.

Dr Judy Buckingham and Professor Joe Graffam belong to the Employment and Social Exclusion (EASE) Research Group, a multidisciplinary team of social scientists within Deakin University School of Psychology. Their research focuses on socially and economically disadvantaged groups, including people with a disability, and examines the conditions that exclude them from mainstream activities like education.

**Notes**

4 Ibid.

Continued on page 36 ...
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8 Buckingham, J. (2004), Towards inclusion, unpublished PhD, Melbourne: Deakin University.

**Other references**


Buckingham, J. (2004), Towards inclusion, unpublished PhD, Melbourne: Deakin University.


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**Related resources**


Michael's sites:


(Resources for Beyond text, Connecting the dots and Social interactions packs)