



Department of  
**Education**

## DISABILITIES ADVISORY PANEL

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## 1 AT A GLANCE...

### 1.1 WHAT?

A Disabilities Advisory Panel is a small group of people with specialist expertise who are appointed to:

- advise the Director General about educational provision for students with disabilities; or
- comment on whether an exclusion order is warranted for a highly disruptive student with a disability.

### 1.2 WHEN?

A Disabilities Advisory Panel will be established when:

- a written request to review a decision of the District Director about the placement of a student with a disability is received; or
- a principal recommends that an exclusion order be made against a student with a disability due to disruptive behaviour.

### 1.3 WHO?

A panel will consist of at least three people with specialist skills and understandings that enable them to offer quality, impartial advice to the Director General about educational provision for students with disabilities.

Parents of a child at the school to which the matter relates and Department of Education and Training employees cannot be members of a Disabilities Advisory Panel.

### 1.4 WHERE?

A Disabilities Advisory Panel will be convened centrally.

### 1.5 WHY?

Panels are held to provide specialist advice to the Director General and a fair and transparent avenue of appeal for parents who dispute decisions that have been made.

## 2 BACKGROUND

A condition of enrolment for a child at a particular government school is the availability of an appropriate educational program for the child at that school. Where a District Director determines that the educational needs of a child with a disability can not adequately be met at a given school, he or she will determine, after consultation with the child's parent/s, alternative government school/s at which the child may be enrolled. In the event that the child's parent/s dispute the District Director's decision, they may apply for a review of the decision. Their application for a review will be referred to a Disabilities Advisory Panel that will consider the case and make recommendations to the Director General.

A Disabilities Advisory Panel may also be established to review the recommendation of a principal that a student with a disability be excluded from attendance at that school. Recommendations for exclusion will be reviewed by a Disabilities Advisory Panel only when the case concerns a student with a disability whose behaviour has disrupted the educational instruction of other students. Where the recommendation for exclusion arises from behaviour that threatens property or the safety of others, the matter will be reviewed instead by a School Discipline Advisory Panel. See sections 91 and 92(3)(b) in Attachment 1 for details about this delineation.

The procedures for a Disabilities Advisory Panel will therefore differ according to the context in which the panel is convened. Procedures for each situation are outlined in the following pages.

For the purposes of the *School Education Act 1999*, "disability" is defined in section 4. That definition, with supporting commentary, is reproduced in Attachment 1 of these guidelines.

The Executive Director of Education Programs Division has been delegated to appoint Disabilities Advisory Panels. Each panel will be made up of people with specialist expertise in relation to the education of children with disabilities and who are not employees of the Department of Education and Training. Panels make recommendations to the Director General.

The Director General is not bound to act on recommendations made by a Disabilities Advisory Panel.

## 3 STAGES IN THE PROCESS WHEN THE ISSUE IS THE AVAILABILITY OF AN APPROPRIATE EDUCATIONAL PROGRAM

This section outlines procedures for a Disabilities Advisory Panel when it is convened to review a decision of a District Director about the availability of an appropriate educational program for a child with a disability at a given school. An appropriate educational program is one which:

- maximises each child's life opportunities, according to their abilities, interests and potential through the planned implementation of an outcomes focused approach to learning and teaching devised in accordance with the Curriculum Framework for Kindergarten to Year 12 Education in Western Australia;
- reflects the rights of a child to education as expressed in international conventions to which Australia is signatory; and
- which takes into account adjustments that could be made to enable a student with a disability to participate. This does not oblige the Department to provide adjustments that would impose unjustifiable hardship.

The District Director determines the school/s at which a student with a disability may be enrolled and informs the student's parent/s of this decision, and the reasons for it, in writing. The template provided at Attachment 4 may be used for this purpose.

If the matter relates to the cancellation of a current enrolment, the child's enrolment will continue at the school until after the panel's recommendations have been forwarded to the Director General and a final decision has been reached. If the matter relates to a refusal to enrol because there is no appropriate educational program, then the District Director may make an interim decision as to where the child may be enrolled. In either case, the District Director's decision will not take effect until the twenty-eight (28) day limit for submission of an application for review has passed, and if a review is requested, until the matter has been determined after the review.

The **required** time limit for completion of a Disabilities Advisory Panel report about an appropriate educational program is **ninety (90) working days** from the day the Director General receives an application for review of a District Director's decision. This is the maximum amount of time allowed. However, every effort will be made to complete the process in a shorter timeframe.

### 3.1 ESTABLISHMENT AND DELIBERATIONS OF THE PANEL

#### STAGE 1

If an application for review of the District Director's determination is received within the prescribed period, it will be referred to a Disabilities Advisory Panel.

The Executive Director of Education Programs will promptly establish a Disabilities Advisory Panel. He or she will also appoint one panel member as Chairperson and an Executive Officer to support the operations of the panel. The panel will examine the matter and report its recommendations to the Director General **within ninety (90) days** of receipt of the application.

#### STAGE 2

The Executive Officer briefs all panel members about the decision to be reviewed and arranges for them to complete the declaration about confidentiality and conflict of interest (see Attachment 2). The Executive Officer also ensures that all relevant information is available to panel members and arranges a mutually agreeable date, time and place for panel members to meet.

#### STAGE 3

A Disabilities Advisory Panel meets to review the decision. In reviewing the case and forming recommendations, the panel will take into account the following:

- the nature of the benefit or detriment likely to accrue to, or be suffered by, the child and all other persons concerned;
- any additional cost involved in providing the program for the child; and
- the effect of the child's:
  - behaviour; or
  - disability or other condition, if any,

on the child's participation in the program.

The student and his or her parents will be advised that they may bring someone to the panel to provide support but this person does not speak on behalf of the student or the parents.

Representation, which is different to the provision of support, is the situation where a representative speaks on behalf of the parents and/or student. The panel may permit representation where it is of the view that the absence of representation will hinder the effectiveness of panel proceedings.

Any additional panel meetings that are required will be arranged by the Executive Officer.

#### **STAGE 4**

A report of panel deliberations and recommendations is prepared by the Executive Officer and signed by all panel members. There will be provision in the report for a panel member to record a minority view.

The report will be submitted to the Director General **within ninety (90) days** of receipt of the application for review.

### **3.2 POST PANEL DELIBERATIONS**

The Director General will consider the recommendations and, within twenty-one (21) days of receipt of the report, will give to the applicant written notice of the subsequent decision and the reasons for that decision plus a copy of the report.

The Director General is not bound by recommendations made by a Disabilities Advisory Panel.

## **4 STAGES IN THE PROCESS WHEN THE ISSUE IS EXCLUSION**

This section outlines recommended procedures for a Disabilities Advisory Panel when it is convened to review a principal's recommendation that a student with a disability be excluded from school on grounds that the student's behaviour has disrupted the educational instruction of others.

On making such a recommendation, the principal will notify the student and a parent of the student about the recommendation and provide them with reasons for the recommendation.

In cases where the behaviour of the student threatens the safety of others or property, the matter must be referred to a School Discipline Advisory Panel. See sections 91 and 92(3)(b) in Attachment 1 for details of this delineation.

The principal is authorised to suspend the student from school for **up to ten (10) school days** while the recommendation for exclusion is considered by a Disabilities Advisory Panel and the Director General.

The **recommended** time limit for completion of a Disabilities Advisory Panel report about an exclusion recommendation is within **ten (10) school days** of the incident that gave rise to the principal's recommendation. This period relates to the permitted length of a suspension. However, every effort will be made to complete the process in a shorter timeframe.

Where there are unavoidable delays, the Director General may authorise the principal to impose a further period or periods of suspension until the Disabilities Advisory Panel process is complete and the Director General makes a decision based on the panel's report.

#### 4.1 ESTABLISHMENT AND DELIBERATIONS OF THE PANEL

##### **STAGE 1**

On advice from the District Director the Executive Director of Education Programs will establish a Disabilities Advisory Panel. The Executive Director of Education Programs will also appoint a member of the panel as Chairperson and an Executive Officer to support the operations of the panel.

The principal's recommendation for exclusion is referred to a Disabilities Advisory Panel by the relevant District Director.

##### **STAGE 2**

The Executive Officer briefs panel members about the case to be reviewed. The Executive Officer arranges for them to complete the declaration about confidentiality and conflict of interest (see Attachment 2).

The Executive Officer ensures that all relevant information is available to panel members, the principal and to the parent/s of the student.

A mutually agreeable date, time and place to meet are arranged with panel members, the student, the student's parent/s and the principal.

##### **STAGE 3**

A Disabilities Advisory Panel meets to:

- review relevant breaches of school discipline;
- hear all parties (student, parent/s of the student and principal);
- deliberate about how the matter was dealt with; and
- recommend how the matter should be dealt with.

In reviewing the case and forming recommendations, the panel will ensure that the student, the student's parent/s and the principal are given a fair hearing.

The student and his or her parents will be advised that they may bring someone to the panel to provide support but this person does not speak on behalf of the student or the parents.

Representation, which is different to the provision of support, is the situation where a representative speaks on behalf of the parents and/or student. The panel may permit representation where it is of the view that the absence of representation will hinder the effectiveness of panel proceedings.

##### **STAGE 4**

A report of Panel deliberations and recommendations will be prepared by the Executive Officer and signed by all panel members. There will be provision in the report for a panel member to record a minority view.

The report will be sent to the Director General.

## 4.2 POST PANEL DELIBERATIONS

The Director General will promptly consider the report and other information at his or her disposal and make an order if he or she is satisfied that the student may be excluded.

The Director General may order that a student is:

- excluded from normal attendance at the school other than for purposes as specified in the order;
- completely excluded from attending the school;
- directed to attend a specified government school or to participate in a specified education program;
- given educational instruction as determined by the order;

or is to comply with a combination of two or more of the above orders.

The Director General is not bound by recommendations made by a Disabilities Advisory Panel.

## 5 ROLES ASSOCIATED WITH A DISABILITIES ADVISORY PANEL

### 5.1 PRINCIPAL

The principal must provide the District Director with written evidence relating to the student's disability that will enable the District Director to make a decision to either:

- convene a School Discipline Advisory Panel with appropriate representation and expertise on the panel; or
- refer the matter to the Executive Director of Education Programs requesting that a Disabilities Advisory Panel be convened.

The information provided must include Student Services reports and any other relevant medical information.

### 5.2 ALL PANEL MEMBERS

All members of a Disabilities Advisory Panel will:

- ensure there is no conflict of interest that would prevent an impartial hearing of the matter;
- maintain confidentiality during and after proceedings in relation to all information received arising from the panel process;
- sign the *Confidentiality/Conflict of Interest Declaration* form;
- apply procedural fairness in all deliberations; (this means that all deliberations must be unbiased and inclusive, and all parties must be given a fair hearing);
- have regard to the social cultural lingual economic or geographic factors or learning difficulties relevant to the case;
- seek additional information or clarification through the Executive Officer if necessary;
- when reviewing the availability of an appropriate educational program, the panel will consider:



- a submission from the applicant/s presenting a case against the District Director's decision;
  - a submission from the relevant District Director;
  - relevant sections of the *School Education Act*;
  - relevant sections of other State and Federal disability discrimination legislation.
- when reviewing a recommendation to exclude a student with a disability due to behaviour that has disrupted the educational program of others, the panel will consider:
    - submissions from the student, the student's parent/s and the principal; all must be given an opportunity to be heard;
    - relevant sections of the *School Education Act 1999*;
    - relevant sections of other State and Federal disability discrimination legislation.
  - formulate recommendations that will be included in a report for the Director General's consideration; (a panel member may have a minority view recorded in the report); and
  - check the completed report and, when satisfied that it is an accurate account of panel deliberations and recommendations, sign the report.

### 5.3 CHAIRPERSON

The Chairperson of a Disabilities Advisory Panel will:

- liaise with the Executive Officer regarding venue, time and agenda for panel meetings;
- oversee the completion of the declaration form by panel members about confidentiality/conflict of interest (see Attachment 2);
- chair panel proceedings and facilitate panel decision making;
- ensure panel members are aware of their role and responsibilities according to the *School Education Act 1999* and other relevant disability discrimination legislation; this includes provisions for a fair hearing, confidentiality and conflict of interest;
- ensure the Executive Officer prepares an accurate written report of panel deliberations and recommendations; this includes ensuring that minority views expressed by panel members are reported;
- check the completed report and, when satisfied that it is an accurate account of panel deliberations and recommendations, endorse that report;
- ensure that all panel members have signed the report;
- forward the panel's report to the Director General; and
- ensure that the process is completed within the required timeframe.

### 5.4 EXECUTIVE OFFICER

In consultation with the Chairperson the Executive Officer will make all arrangements necessary for the convening and operation of a Disabilities Advisory Panel.

Accordingly, the Executive Officer will:

- provide information to panel members and all affected parties regarding:
  - purpose of the Disabilities Advisory Panel in relation to the case being reviewed;
  - procedural advice about the conduct of a Disabilities Advisory Panel;
  - relevant sections of the *School Education Act 1999* and other State and Federal disability discrimination legislation; and

- roles and responsibilities including confidentiality and procedural fairness.
- negotiate a suitable date, time and venue for panel proceedings and provide this information to panel members and the applicant or the student, student's parent/s and principal (depending on the type of case that has been referred to the panel);
- organise travel arrangements and other support services (such as Translation and Interpreter Services) as necessary;
- in consultation with the Chairperson, prepare an agenda for the panel hearing;
- ensure panel members sign the *Confidentiality/Conflict of Interest Declaration* form (see Attachment 2);
- ensure the confidentiality of all documents relating to panel proceedings; this includes collecting all copies of confidential documents given to panel members during panel proceedings;
- assist the Chairperson in ensuring that due process is followed in accordance with the *School Education Act 1999*;
- keep accurate and comprehensive minutes of panel deliberations;
- facilitate the provision of additional information and to undertake any research that may be required by the panel;
- prepare a report of panel proceedings, including panel recommendations, using the format provided in these guidelines (see Attachment 3) and ensure it is signed by all panel members<sup>1</sup>;
- ensure the process is completed within the required timeframe;
- ensure all relevant documents pertaining to the review are filed according to Departmental procedures; and
- sign and date the sections of the relevant Checklist (see Attachments 5a and 5b) as they occur.

## 5.5 DISTRICT DIRECTOR

The District Director is responsible for determining the schools at which a child with a disability may be enrolled and for informing the student's parents of this decision and providing reasons for that decision.

The District Director is also responsible for referring to the Executive Director Education Programs, all cases in which principals have recommended that a student with a disability be excluded from school due to behaviour that has disrupted the educational program of others.

## 5.6 EXECUTIVE DIRECTOR OF EDUCATION PROGRAMS

The Executive Director of Education Programs establishes a Disabilities Advisory Panel and appoints a panel member as Chairperson.

The Executive Director of Education Programs is also responsible for providing support to a Disabilities Advisory Panel. This is manifest in these guidelines by appointing an Executive Officer who supports the work of the panel.

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<sup>1</sup> The range of acceptable practices that may be used to gather signatures in a minimal timeframe includes – having all panelists sign a hand-written original draft report produced on the day; Executive Officer reading the report to members individually over the phone and noting and signing on their behalf; faxing the report individually to members; having all members sign personally.

## 5.7 DIRECTOR GENERAL

The Director General's authority to determine the availability of an appropriate educational program for a child with a disability at a school is delegated in regulations to the relevant District Director.

Any applications for a review of a District Director's decision about the availability of an appropriate educational program will be received by the Director General and referred to a Disabilities Advisory Panel. The Director General will receive the panel's report and send a copy to the applicant. After considering the panel's report and any other relevant information, the Director General will make a decision and convey that decision, with reasons, to the parent/s of the student.

In cases where the Disabilities Advisory Panel reviews a principal's recommendation that a child with a disability be excluded from school, the Director General receives and considers the panel's report and decides whether to make an order that the student is to be -

- excluded from normal attendance at the school other than for purposes as specified in the order;
- completely excluded from attending the school;
- directed to attend a specified government school or to participate in a specified education program;
- given educational instruction as determined by the order,

or is to comply with a combination of two or more of the above orders.

The Director General is not bound by recommendations made by a Disabilities Advisory Panel.

## 5.8 MINISTER FOR EDUCATION AND TRAINING

The Minister's authority to appoint a Disabilities Advisory Panel has been delegated to the Executive Director of Education Programs.

## APPENDIX A RELEVANT SECTIONS OF THE *SCHOOL EDUCATION ACT 1999*

The number of sections provided in this attachment may at first seem overwhelming because *all* sections from the *School Education Act 1999* that may be relevant to the operation of a Disabilities Advisory Panel have been included.

### FROM: PART 1 – PRELIMINARY

### *Supporting Commentary*

#### Definitions

#### 4. In this Act, unless the contrary intention appears –

**“disability”** means a condition –

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments;
- (b) which is permanent or likely to be permanent;
- (c) which may or may not be of a chronic or episodic nature; and
- (d) which results in –
  - (i) a substantially reduced capacity of a person for communication, social interaction, learning or mobility; and
  - (ii) the need for continuing support services;

**“educational programme”** means an organised set of learning activities designed to enable a student to develop knowledge, understanding, skills and attitudes relevant to the student’s individual needs;

**“parent”**, in relation to a child, means a person who at law has responsibility –

- (a) for the long-term care, welfare and development of the child; or
- (b) for the day to day care, welfare and development of the child,

except in sections 9(2), 10(b), 25, 27, 38(1) and Division 6 of Part 2 where it has only the meaning given by paragraph (b).

Definitions of many terms used in the *School Education Act 1999* are given in section 4. Only those that are relevant to a Disabilities Advisory Panel are reproduced here.

Note that the definition for “disability” is cumulative: **all** parts of the definition need to apply to the individual in question for him or her to be deemed to have a disability.

The adjacent definition of “educational programme” should be read in conjunction with section 84 that outlines an “appropriate educational programme”.

The term “parent” is used in the *School Education Act 1999* to refer also to the child’s legal guardian. The same use of the term “parent” has been applied in these guidelines so where you read “parent”, take it to mean “parent or guardian”.

**FROM:****PART 5 – GOVERNMENT SCHOOLS*****Division 3 – Educational instruction*****Educational programme for children with a disability**

**73.** (1) Where a child with a disability is enrolled at a government school, the principal is to:

- (a) consult with the child's parents, any of the child's teachers or prospective teachers and, if appropriate, the child; and
- (b) take into account the wishes of the child's parents and, if appropriate, the child,

for the purpose of addressing or reviewing the particular child's requirements in relation to the content and implementation of the educational programme for the child.

(2) The content and implementation of the educational programme for a child with a disability is to be decided by the principal subject to the direction and control of the chief executive officer.

NOTE: references in the Act to "chief executive officer" can be read to mean the Department of Education and Training's Director General

**FROM:*****Division 4 – Enrolment***

Sections 74 - 76 outline provisions for school enrolment including who is entitled to enrol a child and residential qualifications for enrolment. These sections are of a general nature and have not been reproduced here because they are not likely to be central to Disability Advisory Panel deliberations.

**Enrolment of children below compulsory school age**

**77.** A child is entitled to be enrolled at a particular government school for each year in which the child's pre-compulsory education period falls if –

- (a) there is available for the child at that school –
  - (i) an appropriate educational programme; and
  - (ii) classroom accommodation;and
- (b) the enrolment would conform with other criteria prescribed by the regulations for the purposes of this section.

### **Enrolment of children of compulsory school age at local-intake school**

- 78.** (1) A child of compulsory school age is entitled to be enrolled at a local-intake school if –
- (a) his or her usual place of residence is in the intake area for that school; and
  - (b) an appropriate educational programme is available for the child at the school.
- (2) A child of compulsory school age whose usual place of residence is not in the intake area for a local-intake school is entitled to be enrolled at that school if –
- (a) there is available for the child at that school –
    - (i) an appropriate educational programme; and
    - (ii) classroom accommodation;
 and
  - (b) the enrolment would conform with any other criteria prescribed by the regulations for the purposes of this subsection.

Determination of an “appropriate educational programme” is likely to be central to Disabilities Advisory Panel deliberations. Criteria for such a determination are outlined in section 84.

Where an appropriate educational programme is not available, section 82 (below) makes provision for the District Director to determine what alternative government school/s at which the child may be enrolled.

### **Enrolment of children of compulsory school age at other schools**

- 79.** (1) Subject to subsection (2), a child of compulsory school age is entitled to be enrolled at a particular government school that is not a local-intake school if –
- (a) there is available for the child at the school –
    - (i) an appropriate educational programme; and
    - (ii) classroom accommodation;
 and
  - (b) the enrolment would conform with any other criteria prescribed by the regulations for the purposes of this subsection.
- (2) If the number of children referred to in subsection (1) applying for enrolment at a particular government school that is not a local-intake school exceeds the number of available places at the school, priority for enrolment is to be given to the child who lives nearest the school.

### **Enrolment of children in post-compulsory education period**

- 80.** (1) Subject to subsection (2), a child whose post-compulsory education period falls in a year is entitled to be enrolled at a particular government school for that year if –

- (a) there is available for the child at that school –
  - (i) an appropriate educational programme; and
  - (ii) classroom accommodation;
- and
- (b) the enrolment would conform with any other criteria prescribed by the regulations for the purposes of this subsection.

(2) If the number of children referred to in subsection (1) applying for enrolment at a particular government school that is not a local-intake school exceeds the number of available places at the school, priority for enrolment is to be given to the child who lives nearest the school.

Section 81 provides for the enrolment of persons beyond their post-compulsory education period. It is not reproduced here because it is not likely to be part of the deliberations of a Disabilities Advisory Panel.

### Issues arising on certain applications under this Division for enrolment

**82.** (1) This section applies to a child in respect of whom an application for enrolment has been made under section 74 but who has not been enrolled in accordance with the application.

(2) If in relation to a child a question arises under section 76, 77, 78, 79 or 80 as to whether –

- (a) the usual place of residence of the child is or is not –
  - (i) in the State; or
  - (ii) in a particular intake area;
- (b) an educational programme is available or appropriate for the child;
- (c) classroom accommodation is available; or
- (d) any other prescribed criterion is satisfied, the issue in dispute is to be decided by the chief executive officer.

(3) Where the chief executive officer decides that –

- (a) the usual place of residence of the child is or is not in an intake area for a school;
- (b) an educational programme at a school is not available or is not appropriate for the child;
- (c) classroom accommodation is not available at the school for the child; or
- (d) any other prescribed reason is not satisfied in relation to the child,

the chief executive officer is to determine at which other government school (or schools if a choice is

**NOTE:** The Director General's authority in sections 82, 83, 84 and 85 has been delegated to the relevant District Director.

The District Director may make an interim decision while a review of the case is conducted. Any interim decision made about the case needs to be acted upon.

given) the child may be enrolled.

(4) The chief executive officer may make an interim decision on an issue in dispute pending the making of a final decision, and effect is to be given to the interim decision.

### **Cancellation where enrolment found to be inappropriate**

**83.** (1) This section applies to a child who is enrolled at a government school.

(2) If in the opinion of the chief executive officer a child's enrolment should not continue because –

- (a) the child's usual place of residence has changed to a place that was not in the intake area for the school at the time of the child's enrolment at the school; or
- (b) an appropriate educational programme can no longer be provided at the school for the child,

the chief executive officer may –

- (a) cancel the enrolment; and
- (b) determine at which other government school (or schools if a choice is given) the child may be enrolled.

(3) The chief executive officer is not to cancel an enrolment under subsection (2) without first –

- (a) giving notice of the proposed cancellation, and of the reasons for it –
  - (i) to a parent of the child;
  - (ii) if the child is a prescribed child, to the child; or
  - (iii) to a person whose details have been provided under section 16 (1) (b) (ii) (II);
- and
- (b) giving him or her reasonable opportunity to show why the enrolment should not be cancelled.

(4) Subject to subsection (3), the chief executive officer is to give written notice of the cancellation to the person notified under subsection (3) (a).

(5) The cancellation takes effect at such time as is specified in the notice given under subsection (3) unless section 86 (3) applies.

### **Matters to be considered under sections 82 and 83 about educational programme**

**84.** (1) In determining under section 82 whether an educational programme at a school is available or is appropriate for a child or under section 83 whether an appropriate educational programme can no longer be provided at a school for a child, the chief executive officer is

This subsection protects the interests of the child by requiring the District Director to give prior notice, with reasons, of the proposed cancellation and to give the child's parents time to respond.

Note:

An "appropriate educational programme" is one which:

- maximises each child's life opportunities, according to their abilities, interests and potential through the planned implementation of an outcomes focused approach to learning and teaching devised in accordance with the Curriculum Framework for Kindergarten to Year 12 Education in Western Australia;
- which reflects the rights of a child to education as expressed in international conventions to which Australia is signatory; and
- which takes into account adjustments that could be made to enable a student with a disability to participate. This does not oblige the Department to provide adjustments that would impose unjustifiable hardship.



to take into account –

- (a) the nature of the benefit or detriment likely to accrue to, or be suffered by, the child and all other persons concerned;
- (b) any additional cost involved in providing the programme for the child;
- (c) the effect of the child's –
  - (i) behaviour
  - (ii) disability or other condition, if any, on the child's participation in the programme.

These criteria will be central to the deliberations of a Disabilities Advisory Panel.

### **Decisions under sections 82 and 83 relating to children with a disability**

**86.** (1) Before deciding under section 82 whether an educational programme at a school is available or is appropriate for a child with a disability, or under section 83 whether an appropriate educational programme can no longer be provided at a school for a child with a disability, the chief executive officer is to –

- (a) consult with the child's parents; or
  - (b) take into account the wishes of the child's parents, in addition to the matters specified in section 84.
- (2) If the chief executive officer decides –
- (a) under section 82 that an educational programme at a school is not available or is not appropriate for a child with a disability; or
  - (b) under section 83 that an appropriate educational programme can no longer be provided at a school for a child with a disability,

the chief executive officer is to give written notice to a parent of the child of the decision and written reasons for the decision.

(3) A decision referred to in subsection (2) is not to be given effect to –

- (a) until the time for applying under subsection (4) has passed; and
- (b) if an application is made, until it has been determined,

and a child's enrolment at a school is to continue until a decision referred to in subsection (2) (b) takes effect.

(4) A parent of the child may apply in writing to the chief executive officer for a review of a decision referred to in subsection (2).

(5) The application is to be made within 28 days after the applicant received written notice of the decision.

(6) Within 90 days of the chief executive officer receiving an application made under subsection (4) –

**NOTE:** Regulations delegate the Director General's authority in sections 86 (1), (2) and (3) to the relevant District Director.

This section is also relevant to a Disabilities Advisory Panel because it requires the District Director, when making decisions about appropriate educational programmes for a child with a disability, to consult with the child's parents and to take their wishes into account.

If the District Director decides to cancel the child's current enrolment, he or she must give written notification of this decision, complete with reasons, to the child's parents.

The cancellation of enrolment does not take effect until the permitted time for applying for a review of the decision has passed, and where a review is requested, until the review has been completed and a final decision reached. Meanwhile, the child's current enrolment continues.

Subsections (4) to (9) inclusive provide for parents to request a review of the decision made at 86(2). Timeframes and parameters for the review process are given. This section provides for a Disabilities Advisory Panel to conduct an independent review of the decision.

The Disabilities Advisory Panel is to make recommendations for the Director General's consideration.

- (a) the chief executive officer is to refer the matter to a Disabilities Advisory Panel under section 87; and
- (b) the Panel is to examine the matter and report to the chief executive officer with its recommendation.

(7) The chief executive officer is to provide the Disabilities Advisory Panel with any information or material relating to the child's enrolment that is requested by the Panel and that is in the possession or control of the chief executive officer.

(8) The chief executive officer is, within 21 days after receiving the report, to give the applicant a copy of the report of the Disabilities Advisory Panel.

(9) The chief executive officer after considering the report may confirm, vary or reverse the decision and, within 21 days after receiving the report, is to give written notice to the applicant of the subsequent decision and written reasons for that decision.

### Disabilities Advisory Panels

**87.** (1) The Minister is to appoint a Disabilities Advisory Panel ("**a Panel**"), consisting of not less than three persons, whenever it is necessary for the purposes of section 86 (6) or 92 (3) (b).

(2) A member of a Panel for a particular matter is to be a person –

- (a) who has such experience, skills, attributes or qualifications as the Minister considers appropriate to the case of the child to whom the matter relates;
- (b) who is not an employee within a class referred to in section 235 (1); and
- (c) who is not a parent of a child at a school to which the matter relates.

(3) The Minister is to appoint one of the members of a Panel to be the chairperson.

(4) The Minister may give directions in writing to a Panel as to its procedure and a Panel is to give the applicant an opportunity to be heard, but otherwise a Panel may determine its own procedure.

(5) Subject to the Minister's directions, the applicant is not to be represented by another person before the Panel unless the Panel otherwise determines on the ground that the process will not work effectively without that representation but nothing in this subsection prevents the applicant from being accompanied by another person when appearing before the Panel.

(6) The chief executive officer is to provide a Panel with such support services as it may reasonably require.

(7) The Minister may –

- (a) direct that the members of a Panel are to be

The Disabilities Advisory Panel is appointed by the Minister, but gives its report and recommendations to the Director General. Regulations delegate the Minister's responsibility for appointing a Disabilities Advisory Panel to the Executive Director of Education Programs.

Members of a Disabilities Advisory Panel need experience, skills, attributes or qualifications as the Minister deems appropriate. They cannot, however, be employees of the Department of Education and Training nor can they be parents of a child at the school to which the matter relates.

A key requirement is that applicants get a fair hearing.

The applicant can have someone **accompany** him or her during Panel proceedings. In cases where the panel is of the view that the absence of representation will hinder the effectiveness of proceedings, the panel may allow representation.

- paid remuneration or allowances or both;  
and
- (b) determine the amount of any such payments on the recommendation of the Minister for Public Sector Management.

**FROM:*****Division 5 – Suspension and exclusion*****Breach of school discipline**

- 89.** For the purposes of this Division a breach of school discipline is any act or omission that impairs the good order and proper management of the school.

Regulation 43(1)(c) authorises a principal who makes a recommendation to the Director General that a student be excluded from school attendance, to suspend that student for a maximum period of ten (10) school days.

**Suspension for breach of school discipline**

- 90.** (1) The principal of a government school may wholly or partially suspend from attendance at the school a student who, in the principal's opinion, has committed a breach of school discipline but the principal cannot suspend a student for longer than the period prescribed by the regulations.

(2) The power conferred by subsection (1) is to be exercised in accordance with the regulations.

(3) Regulations under subsection (2) are to provide for the educational instruction to be given to a suspended student.

(4) The power conferred by subsection (1) may be exercised by a person who, or a person in a class of persons which, is authorized by the principal of the school to exercise the power if the principal is absent from duty or is otherwise unable to exercise that power.

**Grounds for exclusion from the school**

- 91.** For the purposes of this Division a student may be excluded from attendance at a government school if –
- (a) he or she has committed a breach of school discipline in circumstances that –
    - (i) have adversely affected or threaten the safety of any person who is on the school premises or participating in an educational programme of the school; or
    - (ii) have caused or are likely to result in damage to property;
  - or
  - (b) his or her behaviour has disrupted the educational instruction of other students.

This section outlines the grounds for which an exclusion order may be made against a student. One subsection relates to serious breaches of school discipline and the other relates to disruption of others. These grounds for exclusion may guide panel deliberations about an exclusion order against a student with a disability.

**Chief executive officer may exclude from attendance at school**

**92.** (1) If the principal of a government school is of the opinion that there are grounds under section 91 for the exclusion of a student from attendance at the school, the principal may –

- (a) recommend to the chief executive officer that the chief executive officer exercise his or her powers under section 94; and
- (b) put before the chief executive officer such information as the principal thinks appropriate.

(2) Upon making a recommendation to the chief executive officer, the principal is to notify the student and a parent of the student that the recommendation has been made and provide the parent with the reasons why the recommendation has been made.

(3) The chief executive officer is to refer the recommendation and other information –

- (a) to a School Discipline Advisory Panel under section 93; or
- (b) in the case of a child with a disability who is the subject of a recommendation for exclusion on grounds under section 91 (b), to a Disability Advisory Panel under section 87,

which is to examine the matter and report to the chief executive officer, setting out comments about how the matter had been dealt with and recommendations about how the matter should be dealt with.

(4) A reference in section 87 to the applicant is to be treated, for the purposes of subsection 3 (b), as a reference to a parent of the child with a disability.

(5) In its examination under subsection (3) in relation to a student other than a child to whom subsection (3) (b) applies, a Panel is to have regard to the social, cultural, lingual, economic or geographic factors, or learning difficulties, that might be relevant to the breach of school discipline or behaviour that is the subject of recommendation.

(6) On receipt of the report the chief executive officer may, having regard to –

- (a) the material referred to in subsections (1) and (3); and
- (b) any other information before the chief executive officer,

make an order under section 94 if he or she is satisfied that the student may be excluded in terms of section 91.

### **School Discipline Advisory Panels**

**93.** This section deals with the make-up of School Discipline Advisory Panels. It has not been reproduced here because it is not relevant to the operation of a Disabilities Advisory Panel.

Where the case relates to a student with a disability whose behaviour has disrupted the educational instruction of others, the District Director will refer the matter to the Disabilities Advisory Panel for review. If the behaviour threatens property or people, however, the case will be referred instead to a School Discipline Advisory Panel.

A panel will review the matter, comment on how it **was** dealt with, and make recommendations for how the case **should be** dealt with.

After consideration of the panel's report and all other information at his or her disposal in relation to the case, the Director General may make an exclusion order against the student.

## Orders that may be made

- 94.** (1) The orders that may be made by the chief executive officer are –
- (a) an order excluding the student from normal attendance at the school but directing him or her to attend the school for the purposes specified in the order; or
  - (b) an order completely excluding the student from attending the school;
  - (c) an order directing the student to attend a specified government school or to participate in a specified educational programme;
  - (d) an order determining the educational instruction that the student is to be given, or a combination of 2 or more of those orders.
- (2) If an order is to be made under subsection (1) (a), (b) or (c) the chief executive officer is to consider making, and if necessary make, an order under subsection (1) (d) in conjunction with the other order.
- (3) An order under subsection (1) –
- (a) may be expressed to have effect for a specified period; and
  - (b) may at any time be revoked or amended by further order made by the chief executive officer.

This section outlines the kinds of exclusion orders that the Director General may make. It is likely that a Disabilities Advisory Panel will consider these alternatives when framing recommendations for or against the exclusion of a student with a disability. An exclusion order may be coupled with a requirement that the student attend a specified educational programme, or be given specific educational instruction.

**FROM:**

## PART 6 – ADMINISTRATION

### Division 1 – The Minister

Review by Minister

- 223.** (1) A person who is aggrieved by a decision –
- (a) made by any person performing a function for the purposes of school education; and
  - (b) concerning an individual student,
- may, in addition to any other right under this Act to have the decision reviewed, request the Minister to review the procedure by which the decision was made.
- (2) The Minister may, but is not obliged to, conduct a review under this section.
- (3) If, on a review under this section, the Minister is of the opinion that –
- (a) the decision was made without compliance with the applicable procedure;
  - (b) the procedure by which the decision was made was unfair, defective or inadequate; or
  - (c) the information available to the person who made the decision was inadequate,

This section enables the parent/s to request a review by the Minister of the procedures by which the decision was made.

the Minister may recommend that the person who made the decision review the procedure or reconsider the decision and may recommend the procedure or information that the Minister thinks is appropriate for that review or reconsideration.

(4) The regulations may regulate the practice and procedure of reviews under this section.

(5) Nothing in this section affects the jurisdiction that the Parliamentary Commissioner for Administrative Investigations has under the *Parliamentary Commissioner Act 1971*.

There are no regulations relating to this section.

**FROM:**

## **PART 7 – MISCELLANEOUS**

### **Confidentiality**

- 242.** (1) A person must not disclose or make use of information to which this section applies except –
- (a) in the course of duty;
  - (b) for the purpose of proceedings for an offence against this Act;
  - (c) under and in accordance with this Act or any other law;
  - (d) with the authority of the Minister or all persons to whom the information relates; or
  - (e) in other prescribed circumstances.

Penalty: \$5 000 or imprisonment for 6 months.

(2) This section applies to information contained in any register or document of or in the possession or under the control of –

- (a) the Minister;
- (b) the chief executive officer or the chief executive officer referred to in section 151, as is relevant to the case;
- (c) the department or the department referred to in section 228, as is relevant to the case;
- (d) the principal of a government school; or
- (e) a panel appointed for the purposes of this Act.

This section states the requirement for confidentiality with information and documentation relating to, among other things, the proceedings of a panel.

This function has been delegated to the Director General.

## APPENDIX B CONFIDENTIALITY/CONFLICT OF INTEREST DECLARATIONS

### 1. Confidentiality

I declare that no information obtained as a result of my participation as a member of the Disabilities Advisory Panel will be disclosed or used except for the purpose of preparing the report of the panel's findings.

### 2. Conflict of Interest

When given information by the Executive Officer relating to the Disabilities Advisory Panel review of \_\_\_\_\_ please complete either A or B (below).

A) 

I ..... (please print name) hereby declare that I have <b>no conflict of interest</b> in this Panel.
--

B) 

I ..... (please print name) hereby declare that I <b>do have a conflict of interest</b> in this Advisory Panel pertaining to:
_____
_____
_____
Due to a conflict of interest, I ..... <b>wish to decline membership</b> of this Advisory Panel.

NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_



## APPENDIX C RECOMMENDED REPORT FORMAT

## 'CONFIDENTIAL'

- 1.0 **Title:** "Disabilities Advisory Panel Report".
- 2.0 **Student details:**  
name, date of birth, home address, year level, school.
- 3.0 **Details of people and school/s involved:**  
name/s and address/es of parent/s, principal, school/s, etc.
- 4.0 **Panel Membership:**  
names and a summary of relevant experience, skills, attributes or qualifications of the Chairperson and other panel members. Also the name and position of the Executive Officer.
- 5.0 **Review meeting/s details:**  
attendees, date/s, time/s and location/s.
- 6.0 **Student Profile:**  
An outline of the nature, severity and educational implications of the student's disability. Note may also be made of social, cultural, lingual, economic or geographic factors.
- 7.0 **Documentation –**
  - 7.1 Submission/s made to the Disabilities Advisory Panel made by (as relevant) the student's parents, the principal, the student and by the Director General or his or her nominee.
  - 7.2 Other documents relevant to panel deliberations and recommendations.
- 8.0 **Record of discussions (as relevant) –**
  - 8.1 Discussions with the parent/s of the student.
  - 8.2 Discussions with the Director General or his or her nominee.
  - 8.3 Discussions with the student.
  - 8.4 Discussions with the Principal.
  - 8.5 Discussions with any other parties called before the Disabilities Advisory Panel.
- 9.0 **Recommendations:**  
All recommendations to be accompanied by reasons. Any minority views expressed by panel members will also be noted.
- 10.0 **Endorsements –**
  - 10.1 Report prepared by (name of Executive Officer).
  - 10.2 Report signed by Chairperson and other panel members as a full and accurate account of Disabilities Advisory Panel deliberations and recommendations.



## APPENDIX D NOTIFICATION TO PARENTS

**NOTIFICATION TO PARENT/S THAT AN EDUCATIONAL PROGRAM IS NOT AVAILABLE OR APPROPRIATE**

To the parent/s and/or guardians of *(insert student's full name)*.

*Insert name/s of student/s parent/s or guardian/s*

*Insert address of student/s parent/s or guardian/s*

Under section 86 (2) (a) of the *School Education Act 1999*, I wish to notify you of my decision that an appropriate educational program *(is not/ is no longer)* available at *(insert school name)*. This decision is based on the following reasons:

*insert dot-points or paragraph of reasons*

I am pleased, however, to offer *(insert child's first name)* enrolment at the following schools, all of which have excellent programs which will afford your child the best opportunity to attain *(his or her)* educational potential.

*Insert names and addresses of alternative schools here.*

I am confident that *(insert child's first name)* will greatly benefit from having access to the programs available at *(“the above schools”/insert name of school if only one offered)*. We are keen to ensure that *(his/her)* transfer is trouble free, so please do not hesitate to contact *(insert name of District Director and/or relevant school principal/s)* on *(insert phone number/s)* if there are any questions or concerns you wish to raise.

Yours sincerely,

*Insert name of District Director*

**DISTRICT DIRECTOR**

*Insert date*

## APPENDIX E CHECKLIST OF STAGES

## E.1 DISABILITIES ADVISORY PANEL APPROPRIATE EDUCATIONAL PROGRAM

Stage	Descriptor	Recommended timeframe	Person responsible (insert name)	Signed	Date
<b>PRIOR TO ESTABLISHMENT</b>	District Director informs student's parent/s in writing of decision that an appropriate program is not available. See Attachment 4.	This day will be referred to as 'day 1'.	District Director.		
	Written request for review of District Director's decision within 28 days of notification (above) being sent.		Director General.		
<b>1</b>	Disabilities Advisory Panel is established and the application for review referred to the panel.	day 3	Executive Director of Education Programs.		
	Chairperson and Executive Officer appointed.	day 3	Executive Director of Education Programs.		
<b>2</b>	Panel members briefed and meeting arranged.	day 10	Executive Officer.		
	Panel members complete declarations.	day 10	Executive Officer.		
<b>3</b>	Panel makes recommendations.	day 25	Chairperson.		
<b>4</b>	Report prepared, signed by all panel members.	day 35	Executive Officer. All panel members.		
	Report sent to Director General.		Chairperson.		

Stage	Descriptor	Recommended timeframe	Person responsible (insert name)	Signed	Date
<b>POST PANEL DELIBERATIONS</b>	Section 86(7) <b>requires</b> that <b>within 21 days</b> of receiving report, Director General will give a copy to the applicant.		Director General.		
	Section 86(9) <b>requires</b> that <b>within 21 days</b> of receiving report, Director General will notify the applicant in writing of his or her decision, and will give reasons for that decision.		Director General.		

## APPENDIX F CHECKLIST OF STAGES

## F.1 DISABILITIES ADVISORY PANEL RECOMMENDATION FOR SCHOOL EXCLUSION

Stage	Descriptor	Recommended timeframe	Person Responsible (insert name)	Signed	Date
<b>PRIOR TO ESTABLISHMENT</b>	Recommendation for exclusion of student with a disability due to disruption.	This day to be referred to as 'day one'.	Principal.		
	Key people notified of principal's recommendation	day one	Principal.		
	Student may also be suspended for up to ten (10) school days.	day one	Principal.		
<b>1</b>	On advice from the District Director, the Executive Director Education Programs establishes a Disabilities Advisory Panel and appoints a Chairperson and an Executive Officer.	day two	District Director. Executive Director of Education Programs.		
<b>2</b>	Panel members briefed and meeting arranged.	day 3	Executive Officer.		
	Panel members complete declarations.	day 3	Executive Officer.		
<b>3</b>	Panel meets - makes recommendations.	day 6	Chairperson.		
<b>4</b>	Report prepared, signed by all panelists.	day 8	Executive Officer. All panel members.		
	Report sent to Director General.		Chairperson.		

Stage	Descriptor	Recommended timeframe	Person Responsible (insert name)	Signed	Date
<b>POST PANEL DELIBERATIONS</b>	Director General considers report and may make an order.	day 10	Director General.		
While there are no time limits for the review of recommendations for school exclusion, all such reviews should be completed <b>within 10 school days</b> because this is the limit of a school suspension allowed by regulation 7(4) pertaining to section 90(1).					