

The Right to Education for Children with Disabilities



About the Authors

This Right to Education for Children with Disabilities factsheet was researched and authored by UQ law students **Gabriela Roworth, India Kenney, Jake Bible, and Matt Stark** under the academic supervision of **Professor Tamara Walsh**. This Right to Education for Children with Disabilities factsheet was prepared for and on behalf of Queensland Advocacy for Inclusion, an independent advocacy organisation advocating for the protection and advancement of the needs, rights, and lives of people with disability in Queensland. Student researchers and Professor Tamara Walsh undertook this task on a *pro bono* basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession.

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About this Document

This document is intended to provide an overview of the right to education for children with disabilities and how to reach the best outcome for your child.

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1. Executive Summary

This factsheet outlines what you can do to ensure your child with a disability has equal opportunity for their primary and secondary schooling education. It provides an overview of your child's rights, the Department of Education's policies, how to work with schools and best raise concerns, and how to seek legal redress. Further, this factsheet clarifies your options and gives you the tools required to meaningfully contribute to discussions with schools about reasonable steps that can be taken for your child's education. At the end of this document, you can find links to further resources.

2. Does my child have rights?

2.1 International law and United Nations Conventions

The rights of persons with disabilities are protected internationally through the [UN Convention on the Rights of Persons with Disabilities and Optional Protocol](#). The purpose of this convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity. Alongside the convention's general principles of respecting inherent dignity, non-discrimination, equality of opportunity and accessibility, it specifically recognises the right of persons with disabilities to education. Unfortunately, this convention is **not binding** on Australian courts or in conciliations, but individuals and families can use its principles as **guidance** to provide a framework for meetings with schools and other related parties in consultation or complaints processes.

2.2 Queensland Human Rights Act

In 2019, Queensland introduced the *Human Rights Act 2019* (Qld) ('the Act'), which aims to protect and promote human rights across several dimensions, including economic, social, and cultural rights. Section 36 of the Act contains the "Right to Education." It requires that "every child has the right to have access to primary and secondary education appropriate to the child's needs." However, the phrase "appropriate to the child's needs" is not defined in the Act. Additionally, there are no cases in Queensland which have discussed the interpretation of this phrase.

Where you believe that a government body (such as the Department of Education) is acting in a way that is inconsistent with the Right to Education, a complaint can be made. How this is done, and the possible outcomes are discussed below.

2.3 Discrimination Acts

2.3.1 Federal - Disability Discrimination Act (DDA)

The *Disability Discrimination Act 1992* (Cth) ('DDA') makes discrimination on the basis of disability unlawful in certain circumstances. The DDA protects people with a disability in many areas of public life, including education.

The definition of disability in the DDA (as outlined below) is broad and does not necessarily depend on a formal diagnosis of disability. Disabilities includes:

- Physical

- Intellectual
- Psychiatric
- Sensory
- Neurological
- Learning disabilities
- Physical disfigurement

Disability discrimination can be direct (when a person with a disability is treated less favourably than a person without a disability) or indirect (when a person with a disability cannot comply with a requirement or condition because of their disability).

2.3.2 Queensland - Anti-Discrimination Act (ADA)

The *Anti-Discrimination Act 1991* (Qld) ('ADA') aims to protect people in Queensland from unfair discrimination, providing a means to bring a complaint and have it resolved. Under the ADA, it is unlawful to discriminate against a person because of their impairment.

The definition of impairment is broad and includes many types of disability such as:

- Physical
- Psychiatric
- Sensory
- Impairments related to the presence in the body of organisms capable of causing illness or disease
- Other conditions such as learning difficulties, autism, and intellectual disabilities

Similar to the DDA, the ADA makes discrimination in education unlawful. People involved in running a school, college, university, or other training institution must not discriminate in education.

2.4 Disability Standards for Education (DSE)

The Federal [Disability Standards for Education](#) ('DSE') clarify the obligations of education and training providers under DDA. The DSE seek to ensure that students with disabilities can access and participate in education on the same basis as students without a disability. All education providers are bound by the Standards including preschools and kindergartens, public and private schools, public and private education and training places and tertiary institutions including TAFEs and universities.

The DSE set out:

- the rights of students with disability in relation to education and training to help people understand what is fair and reasonable under the Standards
- further detail about what amounts to a "reasonable adjustment" for someone with a disability
- the legal obligations or responsibilities of education providers to ensure the provider does not discriminate against students or prospective students
- measures that may be implemented to comply with the requirements of the Standards

Under the DSE, education providers are required to ensure that persons with disabilities are able to enrol and participate in education and have access to educational facilities and services on the same basis as a person without disabilities. This is achieved primarily through:

- consultation with the person with a disability (and parents and carers);
- making reasonable adjustments; and
- the elimination of harassment and victimisation.

This fact sheet provides further information below on consulting with schools and advocating for reasonable adjustments.

3. What are the aims of the Department of Education regarding inclusion?

3.1 Inclusive education policy

The Queensland Government's [inclusive education policy](#) applies department-wide, including in all state schools and educational settings. According to the policy, inclusive education means “that students can access and fully participate in learning, alongside their similar-aged peers, supported by reasonable adjustments and teaching strategies tailored to meet their individual needs.”

The policy's principles include:

- A system-wide approach
- Committed leaders
- Whole of school
- Collaboration with students, families, and the community
- Respecting and valuing diversity
- Confident, skilled, and capable workforce
- Effective transitions
- Monitoring and evaluation

This policy requires the department and all state schools to comply with the *Education (General Provisions) Act 2006* (Qld) as well as state and Commonwealth discrimination laws.

3.2 Restrictive practices policy

The [Queensland Government's restrictive practices procedure](#) prescribes the management of restrictive practices in state educational institutions. Restrictive practices are the use of interventions or strategies that have the effect of restricting the rights or freedom of movement of a student. These include:

- Seclusion
- Physical restraint
- Containment
- Mechanical restraint

- Chemical restraint
- Clinical holding

This procedure states that state school staff have a duty of care to take reasonable action to prevent the risk of foreseeable harm to students, themselves, and other persons. As such, the restrictive practices permitted must only be used where:

- the restrictive practice is reasonable in all the circumstances, and
- there is no less restrictive measure available to respond to the behaviour in the circumstances.

The restrictive practices procedure also outlines the procedures regarding:

- Training
- Each category of restrictive practice
- The provision of first aid
- Individual Student Safety Plans
- Reporting and oversight
- Focused reviews

3.3 Home education policy

In Queensland, providing your child an [education at home](#) is a legally recognised alternative to enrolling your child in school. You can choose to provide home education to your child or engage a Queensland registered teacher.

4. What is a reasonable adjustment?

Under the Disability Standards for Education, and state and federal disability legislation, education providers are required to take reasonable steps to ensure students with disabilities are provided with the same opportunities to reach their potential through education and training as students without disabilities, and that they are not subject to discrimination. This includes an obligation to make reasonable adjustments where necessary to ensure that students with disabilities are able to participate in education and training on the same basis as students without disabilities.

A failure to make reasonable adjustments to assist a disabled child in meeting these requirements or conditions may constitute indirect discrimination.

A “reasonable adjustment” is defined to mean *an adjustment that would not pose an ‘unjustifiable hardship’ on the adjusting person* (i.e., a school). Naturally, this terminology is vague, but judges have confirmed that unjustifiable hardship can be financial or non-financial in nature.

4.1 Process

The process of implementing a reasonable adjustment should include:

- consultation with the student (and parents and carers)
- consideration of whether an adjustment is necessary

- if an adjustment is necessary, identification of a reasonable adjustment, and
- making a reasonable adjustment.

4.2 What makes an adjustment reasonable?

A reasonable adjustment is one that:

- Supports the student with a disability participating on the same basis as other students,
- Acknowledges the particular learning needs of the student, and
- Attempts to balance the interests of everyone involved (e.g., staff, other students, and the student with a disability).

4.3 Examples of Reasonable Adjustments

There is some ambiguity as to what is meant by a “reasonable” adjustment. But by adopting the steps above, and keeping in mind the examples below, parents will be better prepared to argue that adjustments are reasonable in the circumstances and counter the argument that these will impose unjustifiable hardships on the school.

4.3.1 Asking for an Individual Education Plan (IEP)

In accordance with Queensland’s inclusive education policy, an IEP provides an avenue for dialogue to establish reasonable adjustments and teaching strategies tailored to the individual needs of the child. These are most applicable when standard classroom strategies are insufficient to the child’s needs. An IEP serves [various purposes](#), but most importantly, it is a means by which parents and education providers can get on the same page.

4.3.2 Look at basic, disability specific adjustments

This may take many forms, for example:

- Extensions for assessments
- More breaks
- Inclusion of assistive technology
- Note-takers
- Engagement with sensory needs
- Use of equipment

4.3.3 Applications for funding

For Non-State Schools, if your education provider is administered by either the Queensland Catholic Education Commission (QCEC), or Independent Schools Queensland (ISQ), they can be provided a percentage of funding year-to-year on a needs basis. This is from the [Students with Disability Program for Non-State Schools](#). The number of students with a disability at schools affiliated with each authority is the basis for the distribution of funds.

Note: It used to be the case that only certain disabilities were targeted under the EAP. They were: autism spectrum disorder; hearing impairment; intellectual disability; physical impairment; speech-language impairment; and vision impairment.

However, it was announced in 2022 that the impairment categories will be abandoned. Under the new 'RAR' ([Reasonable Adjustments Resourcing](#)), all disabilities will be covered.

Additional assistance may be available for children with autism: ["Positive Partnerships" for autistic students](#).

5. How can I work with the department to achieve the best outcome for my child?

5.1 Set some individual education goals

As a parent or carer, it is important to know what aspects of your child's education you are looking to improve. Setting realistic expectations and being proactive in communication can help build a foundation for a successful relationship with your child's education provider. Prior to contacting your child's teacher, the first step should be gathering information:

5.1.1 Things to think about

- What is your vision for your student's education?
- What does a day at school look like for your child? What **should** it look like?
- What conditions allow your child to learn best?

For more information look to the [Education Department's explanation of inclusive education](#).

5.1.2 Collating thoughts and aspirations

Examples:

- [Example letter from a parent to their child's new teacher](#)
- ["Developing an inclusive vision and setting goals" - Part 4](#)
- [Video speaking to inclusion and what it means to you and your child](#)

5.2 Improve communication and build relationships

The best way to ensure that your child has an equal opportunity for education is to develop a healthy dialogue with the school and its teachers.

5.2.1 Teachers

Developing a relationship with a child's teacher from the beginning of the school year is important. They may be able to implement changes within the classroom to help your child. Teachers may also be able to assist parents navigating the internal school system, helping to identify the senior members of the school that can help.

5.2.1.1 Developing a parent/teacher relationship

Other parents suggest writing a letter to the child's teacher at the start of the year sharing your child's strengths and the difficulties they face in a conventional classroom setting.

Establish a form of communication that works best for both parents and teachers; this may be email, face-to-face, etc. It is important to continue speaking to the teacher/s throughout the year.

Consider the following questions: What goals does the teacher have for your child? How can you work on these at home? This will help create more cohesion for your child between home and school.

5.2.2 The principal and the school

Developing a strong relationship with the school and principal or another relevant point of contact can help deliver quicker solutions at school. This may include larger changes to the school for the purpose of accessibility, the creation of more support systems, or engaging additional staff to accommodate to student's needs.

Consider:

- Talking directly to the school before the start of each year and also at the end to understand what support systems are available.
- Getting involved with the school. This can help to develop relationships with staff.
- Making an appointment with the school if an issue has been bothering your child.
- For further guidance to communicating effectively with schools:
 - [All Students Learning Together: Taking action on education](#)
 - [Australian Alliance for Inclusive Education - points 5 and 6.](#)

5.3 How additional staff can help

5.3.1 Advisory Visiting Teachers (AVTs)

[Advisory Visiting Teachers](#) support students across a number of schools. AVTs mainly specialise in one or more of the six Education Adjustment Program (EAP) disability categories:

- Autism spectrum disorder (ASD)
- Hearing impairment (HI)
- Intellectual impairment (II)
- Physical impairment (PI)
- Speech-language impairment (SLI)
- Vision impairment (VI).

5.3.2 Guidance Officers

[Guidance officers](#) are specialist teachers who provide a range of services to school community members. They work directly with students, teachers, school support personnel, family, other specialists, or external support providers. Support offered by guidance officers include providing advice and counselling on educational, behavioural, vocational, personal, social, family, and mental health and wellbeing issues.

5.3.3 Inclusion Support Teachers

Some schools may also offer additional specialised teachers such as an inclusion teacher. An inclusion teacher can work with students who have been verified with a disability in different situations and they can take on a role working closely with the classroom teacher to aid in the

development of work programmes for a specific student or group. Inquire at your school to determine if the school offers inclusion teachers or extra support staff.

6. What if we cannot agree?

6.1 Raising Concerns

If you feel your child has been treated unfairly, it is important to raise this concern with the education provider first.

These conversations should be approached with a collaborative mindset. More often than not, teachers want to support the provision of education for your child. When addressing the problem, think:

- Who was involved?
- What happened and when?
- What have you and others tried to do to remedy the issue?
- Why are you still unhappy with the situation?

It may be important to reiterate your expectations in a collaborative and respectful manner by asserting that the current standard is not meeting your child's needs and suggesting areas that need to be worked on.

These conversations should principally be organised with the child's teacher or primary educator. In saying this, it may be useful to refer to the [schools directory](#) to find relevant contact information best suited to you.

6.2 Internal complaints mechanisms

If the communications between you and your child's primary educator are no longer progressing, it may be appropriate to go to the school's principal or relevant head of department to facilitate meaningful discussions on how to address problem areas for the child's benefit.

Again, it is important to remember that failure to communicate with your child's teacher does not mean they are against helping your child. Discussions with a principal do not always need to be a "complaint," rather, can be simply asking for assistance for how to best approach your child's education plan.

6.3 Regional office and the Department of Education

If you feel your discussions with the school have not reached an adequate outcome, and are unable to resolve the issue, you may elect to raise it with the local [regional office](#) to conduct a review. Alternatively, you can [contact the Queensland Department of Education](#) to [make a complaint](#).

6.4 Making a formal complaint

It is unlawful for a person to contravene the Disability Standards for Education, the Disability Discrimination Act, or the Anti-Discrimination Act. An aggrieved person or someone on their behalf can make a complaint to the Australian Human Rights Commission (AHRC) about non-compliance with the DDA, or to the Queensland Human Rights Commission about non-compliance with the ADA.

6.4.1 Queensland Human Rights Commission

If a complaint to the school is not resolved directly, you can [submit a complaint to the Queensland Human Rights Commission \(QHRC\)](#). While the QHRC complaint process is quicker than tribunal or court proceedings, the wait time still could be up to, or even more than, 6 months.

The QHRC may attempt to resolve the dispute through a [conciliation conference](#), and may undertake investigations to facilitate some form of settlement.

If the complaint is not resolved, the QHRC's options are limited. They have no decision-making role, and it cannot force you and a school to resolve a dispute. There is limited opportunity for more formal legal action. You can only bring a complaint about human rights before a court or tribunal if you have an argument in discrimination law. The QHRC will be able to advise you on next steps if you wish to pursue a discrimination claim.

6.4.2 Australian Human Rights Commission

If you are unable to resolve an issue at the local level with your education provider, you may wish to make a formal complaint under the DDA or DSE through the Australian Human Rights Commission (AHRC). The AHRC is an independent body that investigates and resolves complaints about unlawful discrimination. Complaints relating to a breach of the DDA or DSE can be lodged with the [AHRC](#).

6.4.3 Court and Tribunal proceedings

In some circumstances, an aggrieved person may commence legal proceedings in:

- the Federal Circuit and Family Court of Australia if the complaint is not resolved through the AHRC processes, or
- the Queensland Civil and Administrative Tribunal (QCAT) if the complaint is not resolved through the QHRC's processes.

It is important to note however that discrimination cases against education providers are rarely successful because the bar for discrimination is high. Schools often argue successfully a child was not discriminated against on the basis of their disability, but rather on the basis of their behaviour.

For example, in *Purvis v New South Wales* [2003] HCA 62; 217 CLR 92, a high school student with an acquired brain injury was excluded from the school because he was violent towards staff and students. The court decided he was treated less favourably on the basis of the way he behaved, not the disability itself (even though the evidence suggested the behaviour was caused by such disability). The case was not successful for this reason. *Purvis* creates an unfortunate precedent which has proven difficult to work around, although there have been some successful attempts (e.g., *Woodforth v State of Queensland* [2017] QCA 100).

Consequently, parents will often see more success pursuing other avenues for conciliation, as outlined in this factsheet, if they believe their child/ren with a disability has been unfairly discriminated against.

7. Further resources

Resource	Description
Discrimination Acts (Federal and Queensland)	
Disability Discrimination Act (Cth) Fact Sheet [Link]	This fact sheet summarises the Federal <i>Disability Discrimination Act 1992</i> (DDA). It outlines the definition of disability, what is discrimination, what the Act does and its interaction with schools.
Queensland's Anti-Discrimination Act Fact Sheet [Link]	This fact sheet explains the Queensland <i>Anti-Discrimination Act 1991</i> (ADA). It outlines what is discrimination under the ADA, when discrimination is unlawful, and relevant exceptions.
Impairment Discrimination Fact Sheet [Link]	This fact defines what impairment discrimination is under the Queensland ADA, when it is unlawful, examples of discrimination, and when different treatment is ok.
Anti-Discrimination Act (Qld) Information Sheet [Link]	This information sheet explains the national and state discrimination legislation, what the Queensland law says about disability discrimination, its relevance for early childhood education and care services, the Queensland Human Rights Commission and where to find more information.
Disability Standards for Education (DSE)	
Guidance Notes [Link]	These guidance notes provide additional explanatory material to assist the reader to interpret and comply with the Disability Standards for Education. It sets out how the Standards work from its application and children's rights to making reasonable adjustments and ensuring compliance.
Disability Standards Fact Sheet [Link]	This fact sheet summarises the Disability Standards. It includes the rights and requirements under the Standards, including what the Standards do, what consultation is, reasonable adjustments, and what happens if there is a breach.
Parental Engagement Fact Sheet [Link]	This fact sheet provides information on key elements of effective partnerships to support engagement between schools and parents. It explains why families and schools should work in a partnership, how schools can effectively engage with parents and carers, and the key elements of an effective partnership.
Effective Consultation Fact Sheet [Link]	This fact sheet provides information on how parents can better prepare themselves for consulting with schools.

<p>Practical Guidance for Individuals, Families and Communities</p> <p>[Link]</p>	<p>This website sets out what individuals' rights are, reasonable adjustments, what is "fair," and how to work together.</p>
<p>Information for Students with Disability and their Parents and Carers</p> <p>[Link]</p>	<p>This website includes further resources that are designed to help you understand your rights as a student with disability and work with education providers to make sure you can learn and participate on the same basis as students without disability.</p> <p>Examples of further resources include explaining the Disability Standards for Education, milestones, and transitions, advocating with and for your child, and the Standards in practice (an action plan).</p>
<p>Complaints Process Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet provides information for people who wish to make a complaint due to disability discrimination in Australian education settings. This information relates to complaints under the Disability Discrimination Act and the Disability Standards for Education.</p>
<p>Queensland Human Rights Commission (QHRC)</p>	
<p>Making a Complaint Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet outlines who can complain to the Queensland Human Rights Commission, how to complain, information about legal representation, and other general information about complaints.</p>
<p>Complaints Process Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet outlines the Queensland Human Rights Commission's role, the complaint management process</p>
<p>Conciliation Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet explains what conciliation is, who attends, how the conference is conducted, the conciliator's role, what happens at the conference, how to prepare, possible complaint outcomes and what to do if the complaint is or is not resolved.</p>
<p>Australian Human Rights Commission (AHRC)</p>	
<p>Complaints Process Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet defines the diverse types of discrimination including disability discrimination, explains how to make a complaint, conciliation, possible court action and includes a flow chart representing the complaints process.</p>
<p>General / Other</p>	
<p>Reasonable Adjustments: Disability Specific</p> <p>[Link]</p>	<p>This web page provides examples of specific disability adjustments that may be reasonable for your child.</p>

<p>Restrictive Practices Fact Sheets</p> <p>[Link]</p>	<p>This website explains what restrictive practices are and links to further resources including practice principles and resources on each form of restrictive practices.</p>
<p>Student with disability guidance</p> <p>[Link]</p>	<p>This document provides an overview of steps that you can take to address concerns with your child's education.</p>
<p>Making a complaint to the Department of Education Fact Sheet</p> <p>[Link]</p>	<p>This fact sheet explains what a customer complaint is, how the department manages it, your responsibilities when lodging a complaint, and what happens after you make your complaint.</p>



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