

INCLUSIVE EDUCATION: THE LEGAL FRAMEWORK

PARENTS AND CARERS | PRIMARY EDUCATORS | SECONDARY EDUCATORS

INTRODUCTION

Inclusive education is not just a philosophy, but a fundamental right for every child. All children have the right to a high-quality education in an environment which celebrates their diversity and leads them to reach their full potential.

Inclusive Education on a Global Level

The United Nations Children's Fund (UNICEF) strongly advocates for inclusive education as a fundamental human right and mandates that quality education should be provided for all children, regardless of disability, socio-economic status, race, gender, or any other factor which might be used as grounds for discrimination.

UNICEF's position on inclusive education is based on several key points:

- **Equal access** to education for every child, including those with special needs.
- **Diversity and inclusion** should be promoted in educational settings.
- **A quality education for all**, which meets the needs of all students, regardless of their background. This includes accommodations to classroom spaces, curriculum and teaching methods to meet the needs of all students.
- **Community engagement**, which recognises parents and carers as key stakeholders in their child's education. Collaboration between education facilities, governments, non-government organisations and communities is key to the best development of the child.
- **Policy and advocacy** for inclusive education to be prioritised and supported by government agencies and educational systems.
- **Capacity building** for teachers and other educators, so that they will be equipped with the skills and knowledge needed to build inclusive environment.

UNICEF's position on inclusive education is further upheld by the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) ([Division for Inclusive Social Development 2006](#) which protects the rights and dignity of persons with a disability. The CRPD focuses on promoting the full and equal participation of individuals with disabilities in all aspects of life.



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Inclusive Education on a National Level

The *Disability Discrimination Act 1992* and the *Disability Standards for Education 2005* mandate the right of any child, with or without a disability, to attend their local government school. This reflects the global *Convention on the Rights of Persons with Disabilities 2006*.

The Disability Discrimination Act 1992 mandates that a school (or any other educational facility) must not discriminate against any individual on the basis of disability, including:

- The decision-making process regarding admission to said facility;
- Discriminatory practices regarding terms and conditions of accepting an application, such as a parent paying higher fees to “cover” the cost of an educational assistant;
- By limiting a student’s access to the full-range of educational activities on the ground of disability, such as external school excursions or sporting activities;
- By suspending or expelling a student on the grounds of disability;
- By failing to create and implement a curriculum which accommodates the unique learning needs of each individual;
- Subjecting a student to any other detrimental or discriminatory circumstances, because of disability.

“Unjustifiable Hardship”

A school (or other organisation) may claim that providing accommodations or adjustments for students with disabilities causes undue or excessive difficulty. Under the Disability Discrimination Act 1992, a facility is permitted to claim that these accommodations or adjustments will cause excessive hardship and may be entitled to deny enrolment or inclusion into other programs.

It is important to note that a claim of “unjustifiable hardship” must be rigorously investigated. The onus of proving this hardship falls upon the facility to demonstrate that:

- The nature and the extent of the adjustments or modifications are beyond the capabilities of certain limitations of the school;
- The financial and administrative resources of the organisation prohibit high degrees of adjustments or modifications;
- The impact on the school operations or services provided;
- Whether other alternatives or reasonable accommodations are available.

It is crucial to emphasise that the concept of unjustifiable hardship must not be used as an excuse to avoid making reasonable accommodations or to discriminate against individuals with a disability. Facilities must be proactive in seeking and implementing many different solutions in providing an inclusive education.



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Inclusive Education in NSW

The position of the New South Wales Department of Education, regarding inclusive education is clear:

The NSW Education Standards Authority (NESA) is committed to ensuring curriculum is inclusive of all students, regardless of disability, ethnicity, cultural background, socioeconomic status, nationality, language, gender, sexual orientation or beliefs. NSW syllabuses are inclusive of the learning needs of all students.

Parents in New South Wales have legal avenues to support them in making a claim of discrimination. The first step is always **discussing and negotiating** with an educational facility. In most cases, this will lead to solutions where both parties have found a mutually agreeable solution.



Next, parents may seek advice from relevant **advocacy groups**, such as Down Syndrome New South Wales, who can provide guidance on navigating the process and offer assistance and support.



If discussions with the educational facility do not lead to a satisfactory resolution, parents might consider **lodging a complaint** with the Australian Human Rights Commission or the NSW Anti-Discrimination Board. These organisation handle complaints related to discrimination and can investigate individual cases.



In more serious cases, parents and carers may consider taking **legal action** through the court system. In this case, legal advice would be sought by solicitors specialising in disability discrimination.



It is crucial for parents and carers of individuals with special needs to be aware of their rights and protections under various governmental and legal bodies. It is equally important to **gather information and evidence**, when considering a claim of discrimination. This includes anecdotal evidence, such as communication with the school, as well as more formal evidence such as specialist assessments. It is always useful to be aware of **existing policies and procedures** in advocating for the rights of your child.

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USEFUL LINKS

The Australian Centre for Disability Law has created a resource “Learning Together - Tools to help you get the support you need at school”, so that students and families can understand their rights, and advocate for reasonable adjustments. This resource can be found here:

<https://disabilitylaw.org.au/projects/education/>

The Australian Human Rights Commission has an online resource which provides helpful information about inclusive education:

<https://humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>

The New South Wales Department of Education has a dedicated page offering information on policies, support services, and resources for students with disabilities, including guidance on inclusive education:

https://education.nsw.gov.au/content/dam/main-education/en/home/parents-and-carers/inclusive-learning-support/resources/Parent_Resource_Guide_Inclusive_Learning_Support.pdf

The NSW Ombudsman’s website provides information on complaints, dispute resolution, and guidance on understanding the rights of students with disabilities in the education system:

<https://www.ombo.nsw.gov.au/Making-a-complaint>

The New South Wales Advocacy for Inclusion Organisation provides advocacy support and information for people with disabilities, including resources related to education rights and inclusive practices:

<https://www.da.org.au/>



References

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ABOUT DOWN SYNDROME NSW

Once upon a time in NSW, Australia, there was a remarkable group of individuals who had children who were born with Down syndrome. Inspired by their children's journey and fueled by their desire to create a more inclusive society, the parents embarked on a mission to establish an organisation dedicated to supporting individuals with Down syndrome and their families. And so, the seeds of Down Syndrome NSW were sown.

As the word spread, more families joined these gatherings, forming a tight-knit community that offered support, understanding, and hope.

The parent group worked tirelessly to run programs and collaborated with healthcare professionals, educators, and community leaders to raise awareness about Down syndrome and advocate for improved services and opportunities.

With the growing momentum, Down Syndrome NSW vision expanded beyond support groups and advocacy. They envisioned a dedicated organisation that could provide a wide range of services to individuals with Down syndrome, from newborn babies right through to support for the aging. With the help of passionate volunteers and the backing of the community, Down Syndrome NSW began to take shape.

Today, Down Syndrome NSW continues to evolve and adapt to the changing needs of the community. We have become a catalyst for change, breaking down barriers and championing the rights and abilities of individuals with Down syndrome. These parents and their story stand as a testament to the power of compassion, determination, and the enduring spirit of individuals, who make a profound impact on the world by turning their dreams into reality.

About our Inclusive Education Initiative

We look to introduce our comprehensive Primary and Secondary School Support Program, designed to benefit both mainstream and special schools. The program's core objectives are to strengthen the capacity of schoolteachers, principals, and SLSOs (School Learning Support Officers) and to foster strong connections among key stakeholders, including families, therapists, and behavior support specialists, all with a focus on putting the student at the center.



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