

Disability Discrimination and Education

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Key Questions

- How many students with disability in a class?
- Workforce Health and Safety
- When is 'no' OK?
- Rights versus resources
- Creating the balance
- Experiences

Cover

- Laws
- SA EOC work
- Education and these laws
- EOC – statistics, processes
- Case Studies
- National Disability Insurance Scheme

Disability Laws

- Equal Opportunity Act 1984 (SA)
- Disability Discrimination Act 1992 (CW)

Discrimination Areas Equal Opportunity Act (SA)

- Part 5 – discrimination on the ground of disability -
Section 66 - *‘in circumstances where it is unreasonable to do so – (i) he or she fails to provide special assistance or equipment required by a person in consequence of the person’s disability’*
- Section 74 – Educational authorities – application, admissions, expulsion, detriment
- Section 84 - Exemption for Unjustifiable hardship –
not *“unlawful discrimination ... in relation to the provision of access to or use of a place or facilities if the provision of access or use would impose unjustifiable hardship on the person”*

Unjustifiable Hardship (EO Act)

What constitutes it?

- All relevant circumstances of:
 - Nature of the benefit or detriment
 - Effect of the disability of the person concerned
 - Financial circumstances and estimated amount of expenditure - by person claiming unjustifiable hardship

Disability Discrimination Act 1992

- **Section 22** – Education (educational authority)
 - no discrimination – to apply, access, curricula
 - Can to provide for a particular disability
 - Can if unjustifiable hardship
- **Section 31** – Disability Standards
 - 31 (1) (b) – Education
- **Sections 37 and 38** – Harassment in Education

and with associates

Of the student, another person with a disability ,
or a person with an associate with a disability

Disability Standards for Education 2005

- Enrolment
- Participation
- Curriculum development, accreditation and delivery
- Student support services
- Elimination of harassment and victimisation

Disability Standards for Education 2005

- Rights of students – on same basis
- Obligations of providers
- Measures – evidence of compliance
- **Parts 4-8** – students with disabilities themselves

- **Part 9** – persons who have associates with a disability
- **Part 10** – exceptions to legal obligations
 - unjustifiable hardship, public health, special schools for people with disability

Unjustifiable Hardship

- **Section 11**
- all relevant circumstances including:
 - nature of the benefit or detriment
 - The effect of the disability of a person concerned
 - Financial circumstances and estimated cost
 - Services or facilities – provide an action plan

Reasonable Adjustment

- ‘adjustment’ - measure or action taken to assist

- a student with disability to participate in education and training on the same basis as other students.
- An 'adjustment' is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including the student with disability, the school, staff and other students.
 - Consultation is an integral part of ensuring that schools are meeting their obligations in relation to 'reasonable adjustments'.

EOC Data

SA EOC Case Studies

Caller's son with Asperger's is in a private school. For the past 3 years his teachers have been handling his behaviour well, following an action plan from his psychologist, etc.

His new teacher this year does not follow his action plan or use any of the tools available and thinks that he is just a 'naughty boy'.

As a consequence his behaviour has escalated

and the school is considering suspending him. If unable to resolve with the school, caller may lodge a complaint.

SA EOC Case Studies

Susan's son was in junior primary school in a special options class for children with a disability. She complained that she was given an undertaking that he could continue in this class the following year, but the school later told her that he would have to move to as there was no place for him at the school.

She lodged a complaint and after conciliation the school arranged a place for her son at the same school in a year 3-7 class.

SA EOC Case Studies

1. Caller's daughter has dyslexia and ADHD and her private school has said there is no point in applying

for exam exemptions as she wouldn't get them. Advice provided including referrals to DACSSA and to SACE policy.

2. 2 ½ y.o. daughter has been diagnosed with mild autism. Has applied to an early-learning centre at a private school. After mentioning her needs, parents were told that the school did not have the resources and that she should apply elsewhere.

SA EOC Case Studies

C's son has an ADHD disorder and was suspended from school over an incident where he had kicked another student. She was invited to a meeting to discuss his behaviour and his return to school after the suspension. She claimed that at this meeting she was not able to put her views, and she became distressed. She claimed that this amounted to disability discrimination.

A conference was held with representatives from the school, and it resolved with an agreement to arrange a meeting involving the principal, C and her son's class teacher to devise a new education plan

for her son, and to discuss a preferred communication plan. This resolved the complaint.

SA EOC Case Studies

Caller has an autistic son. She arranged after school care for her son because she just got a job. Caller says that she has been told he is not entitled to stay for the same hours as the other children - including her daughter, and is not entitled to full hours during holidays. Caller believes that as a result of this she will have to resign from her job

EOC Process

- Enquiries greater than complaints
- Complaints – complex, emotive, parties' relationship
- Conciliation process – impartial
- Over 50% conciliated
- Positive experiences – few referred to EOT

- Equal Opportunity Tribunal

Dyslexia

- Special Provisions in Curriculum and Assessment 2014 policy
- Capacity to participate vs 'reach full potential'
- Full Court of Federal Court – *Hurst vs State of Qld* – hearing impaired child could cope but child may still be disadvantaged if deprived of opportunity to reach full potential
- Tests for special provisions – 30 minutes – process rigour to ensure 2-3 hour test

Resources

- Equal Opportunity Commission's EO 4 Schools website - www.eo4schools.net.au
Contains information about discrimination and activities such as quizzes, crosswords, videos. Aimed towards students but also contains resources for teachers.

- www.decd.sa.gov.au/speced/pages/specialneeds/OnthesamebasisDDAEducationStandards/?reFlag=1
- docs.education.gov.au/system/files/doc/other/disability-standards-for-education-stocktake.pdf

Resources - AHRC

National Disability Insurance Scheme

- SA – focus on 0-3, then 4-13, adults
- Individualised funding
- Ability to purchase services
- Growth in market services
- Quality Assurance
- Emerging issues

Summary

- Rights upheld
- Process of consultation
- Balancing Act
- Reasonable adjustment
- Unjustifiable hardship
- Aspirations for work
- NDIS