

**SUBMISSION IN RESPONSE TO THE EDUCATION AND LEARNING ISSUES PAPER OF THE
ROYAL COMMISSION INTO VIOLENCE, ABUSE, NEGLECT AND EXPLOITATION OF PEOPLE
WITH DISABILITY ("THE ROYAL COMMISSION")**

The Australian Centre for Disability Law ("ACDL") welcomes the opportunity to contribute to the Royal Commission's consideration of issues relating to education and learning. ACDL is a specialist Community Legal Centre, our vision being one of a society in which persons with disability live with dignity, and in which their human rights and fundamental freedoms are recognised, respected, protected and fulfilled. In order to achieve this vision, the ACDL provides specialist legal advice and advocacy services where our clients have experienced discrimination and in other areas of law relevant to disability.

The ACDL provides free legal advice, information and referrals and representation to people with disability in relation to discrimination and other areas of civil law that affect people with disability. Our legal services are directed to vulnerable and disadvantaged clients who often experience disadvantage in other areas of their lives. ACDL also promotes and advances the human rights of people with disability in Australia through its human rights legal work.

The ACDL also seeks to promote the importance of non-discrimination against people with disabilities through extensive community legal education programs.

We note that all case study names have been changed to de-identify our clients, and present below our responses to the questions raised in the Education and Learning Issues paper.

1. Are particular forms of violence, abuse, neglect or exploitation more prevalent in education and learning environments?

We note it is an unfortunate fact, and the reason for this Royal Commission, that people with disability are more likely to be the victims of violence, abuse, neglect or exploitation. It is not clear to us from this question whether the Royal Commission is seeking to compare education and learning environments, or to compare learning environments and other areas of life in which people with disability frequent or reside such as employment, social activities, accommodation or medical facilities.

However, ACDL hears many stories of children with disability in schools being subjected to restrictive practices including seclusion under the guise of 'behaviour management' policies and practices. We hear of children being locked into small seclusion rooms or left alone in classrooms due to what is considered bad behaviour. Parents are told that they must medicate their children before they are allowed to attend school and children are often only allowed to attend school for very short periods of the day. Children as young as 5 and 6 years old are being expelled from schools due to what is seen as problematic behaviour but which is often linked to their disability. Students are also often restricted from attending excursions, camps, carnivals and other school activities, both on and off campus, because of their disabilities.

In its 2019 National Education Survey, Children and Young People with Disability Australia (CYDA) found that 'students with disability are routinely excluded in their education, with many being segregated from 'mainstream' schools and classrooms, not attending school full-time, refused enrolment and excluded from school activities. Suspensions and expulsions are also familiar practices, showing the lack of understanding and support for students with disability'.¹

It is our experience that the *Disability Standards for Education 2005* (the Standards) in the *Disability Discrimination Act 1992* (Cth) (the DDA) do not adequately ensure that children with disabilities are able to access appropriate inclusive education, as there is limited guidance in the Standards on appropriate practices regarding the safety and wellbeing of students. ACDL would like to see the DDA amended to include more robust Standards.

Recommendation: That the Disability Standards for Education be formally and publicly reviewed as a result of this Royal Commission, to include additional measures to protect the right to inclusive education and provide specific guidance on the use of restrictive practices and the safety and wellbeing of students.

2. Does the extent or nature of violence, abuse, neglect or exploitation of people with disability vary between:

a) Stages of education and learning (i.e. early childhood, primary, secondary, tertiary, further education)?

In our experience, when children with disability are in early childhood or primary settings, they are more likely to be undiagnosed in relation to their behavioural or psychosocial disability than in secondary or tertiary settings. If they do have a diagnosis, they are frequently unsupported in their requirements, and therefore open to neglect of their needs by their education providers, and abuse by other students and educators. We have also seen an increase in young children being suspended and/or expelled from pre-school or kindergarten, which sets them up for disadvantage throughout their schooling.

Throughout secondary education, we see an increase in segregation and misuse of disciplinary processes, leading to exclusion, suspension and expulsion. In tertiary and further education, the extent and nature of the abuse and neglect will vary as much as the types of disabilities that are experienced, however the majority of client complaints in relation to tertiary and further education focus on a lack of appropriate adjustments to allow them to complete their assessments and coursework effectively, which can rise to the level of neglect and abuse.

¹ CYDA Submission to the Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Education of children and young people with disability, October 2019, 2

Case study - expulsion

Omar is a 13 year old student in Year 7 at a public school. He has autism, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiance Disorder (ODD) and anxiety, and has a behavioural management plan in place. Due to his disabilities, he often acts out in a silly or joking manner, including swearing, and he often lashes out physically when distressed, which is why his behavioural management plan focuses on ways to calm him down. The school follows a strict discipline policy for anything that is seen as misbehaviour: any student who swears or engages in any physical altercation of any level is automatically suspended for 2 days, and progressively longer suspensions occur for each new breach of behaviour.

Omar experienced increasingly long suspensions throughout Year 7 for minor incidents of physical altercations and swearing, firstly for 2 days, then 4 days, then 5 days, culminating in a 20 day suspension for appearing to threaten a teacher. The teacher and other students interpreted this incident as clowning around rather than a genuine threat and the situation was quickly defused. The incident was not even mentioned by his teacher to his parents until the suspension occurred some days later. His mother repeatedly requested that the discipline and suspension policy be amended to take into account Omar's tendency to act out inappropriately, and for the school to institute alternative forms of discipline in accordance with his behavioural management plan, such as detention or similar. The School did not do so, and after the last long suspension, Omar was again found to be misbehaving and was threatened with expulsion.

b) Settings of education and learning (i.e. inclusive, integrated or segregated)?

In our experience, segregated and integrated education settings are more open to abuse, violence and neglect. In segregated settings, often children with varying levels of disability are grouped together with less supervision than is ideal, which can lead to uncontrolled physical and emotional responses and interactions between students. Our experience has been that segregated classes also create issues of accountability and support for the teachers involved, and lead to management plans for students which involve suggestions of physical restraint and behaviour management that parents are not comfortable with. In integrated settings, students with disability are expected to meet the behavioural requirements of students without disability, which is often highly problematic and leads to greater levels of punishment, suspension and expulsion.

Case study – physical restraint

Maddox, an 8 year old boy with autism, was repeatedly isolated in what the school described as a 'sensory' room, which was on occasion locked. A report by an Ombudsman found that he was in that room 10-15 times a week over a 10 week period, despite his parents not authorising this type of restraint or isolation. Being isolated in this room led to Maddox having PTSD, anxiety and inability to attend his school.

c) States or Territories?

As our centre operates in NSW, we cannot speak to the difference between different states or territories.

d) Government, Catholic or Independent education systems?

Our experience is that all school systems find it challenging to respond to children with disability in education. However, we have noticed a marked reluctance by Catholic schools to accept students with psycho-social or intellectual disabilities from an initial enrolment perspective, as well as attempts to funnel such students into specialised segregated schools, rather than allow them into mainstream Catholic educational facilities. We have seen a case where although four of the family's children had attended the same Catholic primary school, the fifth child was denied entry due to their disabilities, which has caused great distress for a family that was highly involved in their local school and religious community. We have also seen that many government, Catholic and independent schools find it difficult to access appropriate funding to provide additional support for students with disability, which can lead to neglect and abuse.

An issue for disability discrimination law and the education systems is the inconsistencies between different jurisdictions. An example of this complexity and inconsistency arises from the *Anti-Discrimination Act 1977* ("the ADA") (NSW). While the legislation applies broadly to prevent discriminatory conduct in educational institutions, private education providers are not bound by the ADA. A student who experiences discrimination in an independent, private or Catholic school is only able to seek recourse under the Federal DDA, which has a 6 month limitation period, and leads to a costs jurisdiction in the Federal Court if the matter is not resolved at the Australian Human Rights Commission.

Recommendation: That the ADA be amended to remove the exemption for private educational institutions.

Case study – refusal of enrolment

Tobias had attended a Catholic primary school until Year 6, and applied for Catholic high schools in the area. He has mild autism and global developmental delay. However, the local Catholic education office refused to allow him to enrol in the school of his choice, stating that he would not cope with the curriculum and they could not modify it to accommodate him. He then applied for a second Catholic school, however despite multiple follow-ups by his parents, the office did not respond to his application, which meant he was unable to formally appeal the refusal as no formal refusal was made. He was offered a position in a Catholic special school, which his own doctor noted was for students with far more severe disabilities and lower intellectual capacity. His father wrote to the Director of Catholic education, who said they were sorry, but they thought Tobias would do better in a public school. This had a serious impact on Tobias' self-esteem, as he felt he was "too stupid" for Catholic school.

3. Taking an intersectional approach, how do the specific experiences of violence, abuse, neglect and exploitation vary amongst students in education and learning environments?

Our experience is that children and young people with disability of all races, genders, religions and other intersectional factors experience greater instances of violence, abuse, neglect and exploitation in their educational experiences. As our focus is on people with disability, we don't necessarily focus on the intersectional elements of their experiences, but are aware that these are issues that need to be addressed. We do note that we see a large proportion of male students who are suspended and/or expelled due to 'violent' behaviour, which is usually a manifestation of their disability.

4. What are some of the underlying causes of the issues and barriers (outlined in Section 2)? How do these issues and barriers link to or influence the experiences of violence, abuse, neglect or exploitation by people with disability in education and learning environments?

- In our experience, the greatest barrier to a student with a disability receiving an appropriate education is the individual teacher or principal in charge of their education. If a teacher or principal has been very supportive, and the student receives the assistance they need to flourish, then an issue can arise when that teacher or principal leaves and a new staff member removes the assistance and adjustments. Conversely, we also see situations in which the appropriate adjustments are only introduced once a particular teacher or principal is newly involved with the student. Therefore the greatest barrier is appropriate training, disability awareness and support for all educators in the education system to ensure that students are supported no matter who is teaching them.
- Another issue is that often the relationship breaks down between the parents and the teachers/principals in a school if adjustments are not being made appropriately. This can cause ongoing distress for the student, the parents and the school. It would be helpful if the Department of Education could help facilitate better interactions between parents and educators to ensure the best outcome for all students.

Recommendation: That the federal and state governments create a specific training program that provides education and support for teachers in relation to disability awareness and appropriate adjustments, and requires each school to have a specific number of teachers with this training.

Recommendation: That the state education department provide a formal dispute resolution process to enable teachers and parents to discuss issues and conflicts and resolve them effectively for students with disability

- It is our experience that the underlying causes of these issues or barriers is a lack of understanding, awareness, funding or interest in ensuring accessibility in education to students with disability. While barriers to physical access to educational institutions still remain for some students with physical disabilities, there are increasing numbers of

students with intellectual or psychosocial disabilities who are not appropriately supported or assisted in fully accessing education. The mainstream school system struggles to assist students without disability in navigating its complexities, let alone those with particular needs and requirements. An overarching lack of appropriateness and adaptability of education and learning, including lack of training of staff, lack of appropriate adjustments and lack of individualised support and planning play a large role in causing difficulties for students.

- Funding is a major issue for preschool and primary school in particular. Early intervention and support can be life changing for young students in assisting them to manage their disability and learn how to adjust into an educational environment, but without the centre or school having sufficient funding to ensure that these students get the aides they need, then students are forced to rely on their own NDIS funding (if they are able to get it), to attend part-time or to share the aide with other students, which can dramatically inhibit the way in which they progress. In many of our clients' experiences, while funding may be provided for some support, ie an aide for an hour each day, if a student requires additional support or other measures, then they are unable to get that support. We have also noted that many schools refuse to provide an Auslan interpreter for students due to funding constraints, but this can lead to a situation where a student is not being taught in the most appropriate language, and therefore restricts their education.

Recommendation: That state and federal governments ensure that accessibility and adjustments for early childhood and primary school students in particular are appropriately funded by directing additional funds towards those areas.

- A number of school environments are not appropriately adaptable or flexible. While it is an important part of any education setting that students and children are encouraged to comply with appropriate rules and policies, we often find dogmatic adherence to outmoded processes hampers the ability of students with disability to be appropriately engaged and educated. This appears particularly so in relation to policies around discipline and behaviour, which unfairly impacts upon students with learning or behavioural disabilities.
- The accessibility of premises can be an issue for students, particularly in remote or regional areas where public schools are often quite old, outdated and have little funding for making premises more accessible. We have also seen some cases in secondary education where students are limited in what electives they can take as part of the curriculum - for example, a high school student who sometimes used a wheelchair was told she was unable to participate in science classes because she was unable to reach the benches, with no consideration of appropriate alternatives to allow her participation.

Recommendation: That the School Infrastructure NSW program currently underway by the NSW Government ensures that all public schools in NSW are assessed as to their physical accessibility for all students, and prioritise funding to increasing accessibility for students with disability

- Gatekeeping is something that we see frequently in our practice, as this appears to be a common way of educational institutions dealing with their own limitations, by refusing enrolment outright, limiting enrolment to a part-time structure, refusing to allow attendance at school or events without an aide or parent in attendance, or requiring students to be in a segregated or specialised class rather than a mainstream class with support. Putting specific restrictions on how a student can access the education creates significant levels of isolation, hardship, neglect and abuse, and puts additional strain on families and other care givers, as students who are unable to be accommodated within a school environment are forced to be educated in alternative ways that may not be in their best interests.
- We have seen many examples of students only being allowed partial enrolment or partial attendance at schools, with no clear progression for proceeding to fulltime enrolment. While it may be seen as a reasonable introduction to an educational institution to start a child with specific needs in a part-time enrolment, this should only ever be a temporary solution to focus on managing particular behaviours or until appropriate assistance can be secured, and a clear program for transitioning to a full-time enrolment should be developed in consultation with the parents. We have also heard of incidences where parents have been told that the school will only enrol a child if they are on medication for their disability, which is obviously placing restrictions on the child in terms of how they can access their education.
- In our experience, segregation can happen in many different ways, whether via enrolment into a particular 'special' school, requirement to enrol in a 'special' class, or in separating students in different classes for different issues. We have also seen examples of students who are separated from their peers during food and play breaks and required to stay in small fenced-off areas or inside the classroom. Segregation in general can lead to distress, social isolation and a decrease in ability to interact effectively with other students, as well as increasing the possibility of violence, abuse and neglect in settings which are less populated and less regulated.
- Exclusion from school activities is an issue which we see frequently in relation to students with disability, and is highly problematic for students in terms of feeling included in their school and community. We have given advice to students who have been excluded from camps, excursions and sports carnivals, usually without proper consideration of how they could be included, or what other measures could be taken to reduce the impact of their disability. Often inflated views about the risks to the student or other students are used to justify exclusion, whereas taking a more inclusive view would focus on how activities could be modified to be accessible for all students.
- Suspensions and expulsions is a significant issue for students with disability, who are often punished for behaviour which is a manifestation of their disability, and the impact of collective years of neglect and abuse by the school system. Once a suspension occurs, then it is often a slippery slope to further and longer suspensions, which leads to lengthy

time away from school, disrupting education, socialisation, adaptation to school routines and general appropriate development.

- Parents are often required to attend school with students or to pick them up when the school contacts them at short notice, either on an ad hoc basis or as part of the suspension process. This has a particular impact on the ability for parents of children with disabilities to work, and is disruptive for the whole family.
- Further, parents are often not informed of issues with children until the child is suspended and then they are told that there has been a number of incidents. We find that parents are particularly frustrated as they have often provided significant amounts of information on how to interact appropriately with their children, but this is often not followed through by the school.
- We have had many clients who have been refused access to further education at private colleges, TAFEs or universities due to limitations on what adjustments can be provided to allow them to attend the course, and the focus on 'inherent requirements' of course outcomes, rather than considering what interests the student and what they could gain from participation.
- A lack of reasonable adjustments is a key area for many of our clients, where adjustments are sought by parents, and information and medical evidence to back them up are provided to the school, but schools are unable or unwilling to provide the adjustments in the ways that are required. Our experience is that schools are often unaware of what their obligations are under disability discrimination law to provide adjustments, and are also not appropriately supported to consider how the curriculum, campus, course and cohort can be modified to be accessible for all students.

Recommendation: That guidance documents be developed in relation to disability discrimination law (including the Federal Education Standards) that clarify what sort of adjustments should be implemented and how schools can do so, to support consistent implementation of reasonable adjustments in all schools.

- A major issue for students sitting the Higher School Certificate (HSC) in NSW is an inconsistency between the adjustments for a student's disability that have been provided by the individual schools prior to the final years, and the adjustments that NESA (the NSW Education Standards Authority) who administer the HSC will accept, as NESA has a different standard of adjustment and requires students to apply through their school for adjustments prior to starting their HSC studies. This leads to a situation where although a student may have had appropriate adjustments to assist them to learn and undertake exams and assessments for many years, they are required to apply separately for these adjustments, and may have them rejected due to insufficient evidence, or due to NESA's preference that everything is handwritten and scribes/readers are used, rather than adaptive technology. We have had a number of students who have not been able to access the adjustments they need, which has had serious negative consequences for their ability to undertake the exams.

Recommendation – that NESAs be required to follow adjustments made at school level for HSC exams.

- Behaviour management is a key issue for a lot of our clients, particularly younger boys, who have autism and/or ODD or ADHD. Although frequently parents provide reports, suggestions and information on the best ways to manage their individual child's behaviour, our experience is that many schools do not implement these approaches consistently, which leads to acting out by the relevant children, and discipline such as punishment, exclusion, partial enrolment, suspension and eventually expulsion.
 - This also feeds into a lack of individualised supports and planning. Repeatedly, we are told that although a parent has met with the school, provided reports, provided information and answers to all the questions asked, and requested an individualised support plan and/or behavioural management plan, these have not been provided, and instead their child continues to be singled out, disciplined more harshly and treated in ways that are not appropriate for their disability.
- 5. What measures and mechanisms prevent violence, abuse, exploitation and neglect of students with disability in education and learning environments? What role does or could inclusive education play in preventing violence, abuse, neglect and exploitation in society?**

Appropriate use of adjustments, supports, and adherence to the Education Standards assists greatly in ensuring that students have access to a safe and productive learning environment. It is important for parents, caregivers and medical professionals involved with the student to have input into developing individual education plans and behavioural management plans, to ensure that there is consistency in knowledge, information and expectations at home and at school, particularly for students with intellectual or psychosocial disabilities, for whom structure and routine can be highly beneficial in helping them to learn. We find that many parents are very frustrated that they have provided information and specialist reports with recommendations on how to deal with their children which are not implemented and often ignored. Often these strategies are not difficult to implement and simply involve a specific way of interacting with children. We provide a number of case studies below which illustrate the problems.

6. Do you have any experiences that illustrate any of these matters?

Case study – absence of appropriate adjustments to physical environment

Mia lives in a regional town and attends the local school. She had an operation on her legs, and during her recovery, her doctor told her to use her wheelchair at all times while at school. Her mother requested that the accessible toilet, which was usually locked, be unlocked for her use, and provided medical reports to the school. However, the teachers often told her to get out of her wheelchair and walk, and the toilet was frequently locked. Temporary ramps were sometimes available but they were dangerous and Mia fell on one ramp. A complaint

was unsuccessful and Mia now faces 4 more years of schooling with a difficult relationship with the school, but has limited options because of her area.

Case study – removal of adjustments due to staffing change

Alvin and Colin are brothers, aged 10 and 11, who both have autism, ODD and ADHD. Their mother said that under a previous principal, they were doing well, referred to as 'star students', and were given adjustments that were very supportive including a teacher's aide, safe spaces with sensory activities, and extra learning supports such as visual aids. The boys could also ask for breaks during class if they were feeling overwhelmed, and if one of the boys had an outburst, he would be allowed to remain in the classroom to use the computers with his teacher's aide and even his brother. This strategy was effective at calming them down so the boys' mother didn't have to collect them from school. They also used to have a meeting each term with the principal, the teachers and the aide and learning support teacher and parents. A new principal immediately withdrew all adjustments, changed the teaching arrangements so that they had 2 different teachers each day, removed all breaks from class and stopped all meetings with the parents. The new principal also singled out the students for differential treatment, including locking them in a classroom alone when they had an outburst, so that they became distressed to the point of screaming, and refusing to pass on important information to school medical staff about changes to the students' medication.

Case study – failure to have adjustments for HSC, inconsistencies between approaches

Devi was in Year 11 when his mother first applied to NESA for appropriate adjustments for his upcoming HSC exams. Devi has dysgraphia, learning difficulties, ADHD and anxiety. For the past 6 years, his school had allowed him to have appropriate adjustments, based on OT and paediatrician reports which included extra time and resting breaks during exams and assessment tasks, and the use of a laptop in class and during assessment tasks. However, NESA refused to accept any of the reports or the evidence from the school, requiring 2 handwritten assessments from Devi to prove his handwriting difficulties, which he could not provide, having not completed a handwritten test for the past 4 years. Devi would therefore have to complete additional assessments to prove his disability for the external exams, which was manifestly unfair. Despite multiple appeals and disability discrimination complaints, he was unable to resolve this issue prior to completing his exams.

Case study – partial enrolment/attendance

Ricky had been attending school for a few weeks with supports for his autism, ODD and ADHD, when the school created a behavioural management plan and determined that his absconding from class was too disruptive, therefore he was placed on partial attendance. However, there was little logic to how this partial attendance was organised, with the principal emailing his mother each week with a different plan for what hours he could attend each day, making it very difficult for her to plan her working week and also for Ricky to get into a consistent routine which would assist with his behaviour.

Case study – removal of behavioural support and attempt to segregate

Zed is a Year 8 student who was moved from a mainstream school to a private Christian college for children who had behavioural challenges, as his mother felt his multiple disabilities (autism, ODD, ADHD, anxiety and depression) would be better catered for at that school. However, despite having success with his behavioural plan which had been created by his medical team, the school stopped implementing the supports, and said that he was becoming more aggressive, lying and not doing what the teachers wanted, and therefore needed to be moved to a school for emotionally disturbed students. His mother was only given verbal reports of problematic behaviour, and when she met with the school after he was placed on indefinite medical leave, she was given two options – either start the enrolment process to another school with school support, or he would be expelled and she would have to go through the process by herself.

Case study – refusal to enrol due to diagnosis

3 year old Milen has been diagnosed with autism. His mother sought to enrol him in a childcare centre, and was told they had days available. However, when she mentioned his diagnosis, they said they had “already met their quota of children with disabilities”. She informed them he didn’t need a carer or extra support, he was toilet trained and had been to daycare before, however they still refused to enrol him. Later in the year, the childcare centre offered him a place again through her husband, and when they again mentioned his diagnosis, the childcare centre withdrew the offer, as they said it “wouldn’t be fair on the other children and teachers to take on more kids with disabilities.” This highlights a lack of disability awareness and an assumption that a diagnosis requires intervention despite parental information being provided about the individual child.

Case study – refusal of enrolment at tertiary level

Jess was passionate about pursuing a vocational course at her local college. Jess has cerebral palsy, epilepsy and a mild intellectual disability. At the age of 23, Jess had already completed a course and was interested in further developing her passion and skills.

Jess organised a meeting with the course facilitator to discuss what adjustments could be made to assist her to enrol in and complete the course as she uses a wheelchair, only has use of one hand and communicates through a talking device. The facilitator was concerned about Jess' ability to complete the course to industry standard due to her disabilities.

When Jess attended the pre-enrolment day she was required to complete a quiz. Her support person was sent out of the room and the teacher's aide present did not provide assistance, including to enlarge the text on the screen so that Jess could read the quiz. Jess was also embarrassed by the teachers' loud remarks about her epilepsy when her support person expressed concern for being made to leave the room. Depressed and angry after this experience, Jess did not attend her physiotherapist appointments and required treatment by a psychologist.

Jess made a complaint to the Australian Human Rights Commission, and approached ACDL seeking information about the conciliation process. ACDL assisted her in procedural and legal matters, and Jess felt that she was able to express her views and be heard. The conciliation resulted in the college apologising to Jess and committing to updating their disability policies. She also received some compensation to pay for a similar course to complete elsewhere.

Case study – lack of behavioural management plan leading to multiple suspensions

Amir is a 13 year old boy with autism. He was in a mainstream class at a public school, with an aide for some classes. He was suspended for 3 days for kneeling another student in the back. His parents sought additional aide time, but the school did not respond, instead they suggested that he be moved to a multi-category class at a school 45 minutes away. An incident occurred where Amir 'moonied' students to get a laughing reaction, and he was suspended for 4 weeks, with a further partial enrolment for 2 weeks. This made him depressed and express suicidal thoughts. There was no behavioural management plan in place, despite repeated requests from his parents for the school to develop one, and no consideration to adjusting the application of the discipline policy to accommodate him. He was also told that he would need to be medicated if he was to return to class.

Case study – refusal to implement adjustments for older student

Larry is a student in Year 11 who has recently been diagnosed with an adjustment disorder. His mother provided reports to the school, requesting adjustments including flexibility around assessments and deadlines, and an individualised education plan. The school refused to accept these suggestions, did not create a plan or provide adjustments. Individual teachers supported his mother's suggestions, however the school as a whole refused to implement the assistance that he required.

Case study – partial enrolment/refusal to assist in transfer

Sammy is a Year 11 student who recently changed his schools. His previous school only allowed him to attend 1 hour per day from Year 7 until Year 11, due to his autism and mild intellectual disability. He was in a specialised autism class at his new mainstream school, and doing well, but after an incident, his new school said he would have to transfer to a specialised behavioural school. His mother had concerns about his ability to cope in that school as there were many kids with severe behavioural disabilities there, but the Department of Education refused to consider any alternatives and would not assist her unless she agreed to transfer him to that school.

Case study – adequacy of adjustments – Auslan interpretation

Otis is a 6 year old child with cochlear implants and other physical disabilities. His mother sought an appropriate Auslan interpreter to be provided at his local school to enable him to learn effectively. However, the school repeatedly hired support officers with low levels of signing capability, and did not ensure they were positioned correctly in the classroom or at

assemblies, thereby limiting his ability to be taught bilingually. When she complained, the school suggested that he would do better at a school for deaf children, or at a school with a class for deaf children, rather than continue in mainstream education.

Case study – lack of access to curriculum

Patty is an autistic girl in Year 9 at a mainstream school with a specialised disability unit, which she attends. However, she is given minimal access to mainstream classes, as all students in the disability unit are only allowed to access the lowest grade level of all classes. Her father advocated for her inclusion in a higher level of mainstream maths, and she excelled. He had concerns that the gifted and talented aspects of his children were not being appropriately encouraged or supported, as the school was presuming incorrectly that they needed to be in lower level classes due to their disabilities.

Case study – punishment of child with disability

Jude is a 10 year old student in year 4 attending a Catholic school. Jude has Autism and intellectual disability. A parent of another child made formal complaints to the school about Jude and his behaviour towards their child. The behaviour contained in this complaint included a friendly hug at an extracurricular activity without school supervision, a gentle push/shove in a noisy classroom, and Jude clicking his fingers encouraging the other child to join in and clap in a game. In response to these complaints the school conducted a risk assessment and decided to keep the boys separate and remove Jude from his classroom, which would have a significant and negative impact on him. Jude has also been told that if he does anything however minor in relation to the other child over the next 2 years of primary school he will be suspended and ultimately expelled.

Case study – partial enrolment and refusal of aide

Lawson is a 10 year old boy with an intellectual disability. Lawson had a bad experience when he was in kindergarten where he was severely hurt by another student. This caused Lawson to develop a fear of other children and school. His mother spoke to the nearby Christian school and they agreed to let Lawson come for a few hours 2 times a week as a transition program with the eventual goal of enrolment. After 2 years of this transition program and slowly increasing his time at school to 4 days a week, Lawson developed some great friendships and found a place in the school community. When Lawson's mother again approached the school about partial enrolment and eventually full time enrolment, the school verbally rejected the enrolment as they believed Lawson would be a burden to other students and they did not have the funding for a full-time aide. Lawson's mother was later told by her local MP that there was in fact sufficient funding for the school to hire a teacher's aide.

Case study – informal discipline and punishment without parental approval

Cassie is an 8 year old student in year 1 attending her local public school. Cassie has Autism which can manifest in aggressive behaviours. Cassie has recently had an IEP put in place and her psychologist visited the school to make recommendations on what the school can do to

accommodate Cassie and what adjustments she requires. Throughout the year Cassie has had many “in school” suspensions which were not communicated to Cassie’s parents and the school would regularly question Cassie about incidents without a parent or support person present. Eventually Cassie was formally suspended for a very minor incident.

Case study – exclusion, lack of support, partial attendance

Ariel is a 10 year old student with Autism, ADHD, Tourette’s Syndrome, specific learning difficulties and a language disorder. Ariel is considered to be a high risk student both behaviourally and emotionally and needs sustainable support within the school environment. Part of Ariel’s disability is her inability to cope in loud spaces, large open areas and large crowds. This includes spaces like the playground at lunch and recess, assemblies and sports carnivals. During term 1 and 2 she was allowed to remain in the classroom under the supervision of a support worker however in term 3 the school decided that she must now go into the playground on Thursdays and Fridays at lunch. This decision to force Ariel out of her comfort zone and into the playground was made without any professional guidance from Ariel’s allied health team and without consultation with Ariel’s parents. Ariel had a huge emotional and volatile breakdown due to the announcement that she would now have to spend every lunchtime in the playground without any support.

During this period the school also decided that Ariel’s support worker was ‘inadequate’ and had ‘grown too attached’. This is despite Ariel flourishing under her supervision and Ariel’s parents believing that she was an excellent fit for Ariel’s needs. As a result of these changes Ariel’s anxiety and Tourette’s was exacerbated causing meltdowns, behavioural issues and self-harming. The school’s solution to this was to allow Ariel to only come to school for 1 hour a day.

Case Study – Attendance restrictions

Blake is an 11 year old boy with autism, ADHD and anxiety, He attends a specialist disability school however he is only allowed to attend school for 15 minutes a day. During those 15 minutes Blake must say good morning or hello politely or smile. He must give “normal” answers to questions and he must walk “normally” which means not to flap his hands, and not to skip, hop, jump or run. His mother must stand at the school gate during this time in the line of sight. Blake’s mother has been told that he must be able to do this for four days in a row before the school will consider increasing the time Blake can attend. His mother believes that the school is setting Blake up to fail as the actions the school wants to prohibit are manifestations of Blake’s disability.

Case study – Exclusion from activities

Ari had depression and anxiety, and had expressed suicidal thoughts to a counsellor at school. As a result, he was denied the opportunity to attend his school camp, due to concerns about his effect on other students. No opportunity for discussing appropriate reasonable

adjustments, such as attending part-time, not staying overnight, or having his parents nearby in case there were issues, were explored by the school.

Case study – Suspension of kindergarten student

Caleb is a 5 year old student in kindergarten, with autism, sensory processing disorder, and kidney issues which lead to constipation and pain. He has a behaviour management plan in place, and had a full-time teacher's aide, until her funding was reduced to part-time. Caleb was suspended 4 times throughout the year, including for 20 days which coincidentally aligned with the teacher's aide being on long-service leave. The majority of these suspensions were for minor incidents, which should have been handled through the behaviour management plan. Although his mother appealed each suspension, the Department refused to revoke them, which means that any further suspension is liable to lead him to expulsion in his first year of school.

7. What barriers or impediments are there to identifying, disclosing and reporting violence, abuse, neglect or exploitation in education and learning settings?

There are many barriers or impediments to identifying, disclosing and reporting issues occurring in education and learning settings.

For many situations of violence or abuse, in order to appropriately identify the perpetrator, children need to be able to communicate effectively. Barriers to collecting information effectively can include the disabilities of the students involved, who may be non-verbal, or have cognitive deficits or delays which impede their identification or explanation of particular incidents, either on their own behalf or as witnesses for other students.

The age of the children and the power imbalances of those involved create a significant barrier. Children are put in a vulnerable situation when their teachers and caregivers take advantage of their naivety and their willingness to trust. Children often don't question the authority of those in charge, and if you add disabilities to that equation, then that creates a significant barrier to identifying, disclosing or reporting issues, as they may be scared to make complaints against educators for fear of retaliation, or they may not recognise what has happened to them as abuse or neglect.

In regional areas in particular, families are often reluctant to raise issues as there may only be one local accessible public school in the area, and they do not want to be barred from accessing it for their child/ren with disabilities, especially if they have other children who attend the same school. Families also do not want to be labelled trouble makers in small towns, as this can lead to a situation of further social isolation.

Parents with non-English speaking backgrounds often find it particularly difficult to engage with the school, and to ensure that the information they are receiving about violence or neglect is appropriately reported and acted upon.

Teachers and other educators have a responsibility to ensure the safety of children in their care, and therefore should report violence or abuse. However, we note that often the student

with the disability is the only one reported or disciplined in situations in which aggressive or violent behaviour has occurred between students. It is also clear to us in some cases that teachers are behaving in ways that can be seen as bullying and inappropriately aggressive, but the repercussions for this behaviour fall back to the student.

Case study – retaliation and conflicting statements

Liam is a Year 8 student with autism, who has been placed in a newly created Multi-Category Support (MCS) class with 2 other students, with a full-time teacher and part-time teacher's aide. A personalised support plan was created for him which included statements authorising the use of physical restraint as a last resort. His mother was not happy with this inclusion, and sought to remove it, but the school refused to remove that inclusion and threatened to disenrol Liam. According to Liam there was an incident involving a teacher restraining Liam by his wrists and dragging him around the classroom after 'king-hitting' him. The teacher's version of events was quite different to Liam's version; she said that he had attacked her and another student with a paintbrush and she had to restrain him for safety, and Liam was suspended. When Liam's mother complained to the police and tried to get an AVO against the teacher, she discovered the teacher had taken out an AVO against her son. Liam was not allowed to be in the MCS class because he could not be within 20m of the teacher, and was forced to commence distance education instead, as this was his only local public school.

8. What barriers or impediments are there to adequately investigating violence, abuse, neglect or exploitation in education and learning settings?

Again, the absence of effective witness statements, as children and particularly children with disabilities may not be clear, consistent or able to adequately describe what has happened, when and who was involved. We have seen situations in which students have injuries that cannot be adequately explained, but as the students themselves cannot properly describe what happened, police refuse to investigate the situation.

We have heard of examples of children being told by teachers and principals to give information about incidents without them having support people or family with them. This is then used to suspend or expel children. One example was a child was put in a room by himself and told to write out what happened to him in relation to an incident that occurred three months ago.

Case study – misleading report and inaccurate diagnosis

Clara is a young girl who was struggling at school. When she was 8 years old the school counsellor wrote a report about Clara without contacting her parents. In that report the counsellor stated that Clara was obsessed with dinosaurs, that she had rocking behaviour, and that she didn't have any friends. These things were all untrue. Clara's parents did not see that report at the time but it was sent to a GP who diagnosed Clara with autism after a 15 minute consultation. Based on this diagnosis the school was able to obtain funding for a support worker for Clara. However Clara was treated by the school as if she had autism. For example teachers would often say they were concerned that Clara may have a meltdown, and

she was put into a class with other children with autism where she was attacked by another student. When Clara's parents found out about the report they organised for an independent psychologist to assess Clara at their own expense who diagnosed Clara with intellectual disability not autism. The school has acknowledged that the counsellor's report was incorrect however it has not been providing assistance in relation to the hurt caused by this. Ironically the fact that she no longer has an autism diagnosis has meant that the support funding for her has been removed.

9. Are there good practice examples that encourage reporting, effective investigation and responses to violence, abuse, neglect or exploitation in education and learning settings?

We are not aware of any particular good practice examples in schools, but urge the Commission to explore as many possibilities as are available through further research and consultation.

We have found however that good outcomes are often achieved for students of both TAFE and Universities when they have access to disability advisers. In one case in particular that we were involved with a disability advisor gave extensive support to a TAFE student who was told that she would not be able to complete the practical component of her course which would mean that she would not meet the requirements of the course. The disability advisor advocated strongly for the student which resulted in a positive outcome for her. This however involved speaking up about the actions of her employer which the disability advisor found challenging.

10. What has prevented Australia from complying fully with its obligations in Article 24 of the CRPD?

A lack of political will and motivation, which has manifested in an absence of funding or leadership in this area, appears to have prevented Australia from complying fully with its international obligations.

What needs to change within

a. Commonwealth, State and Territory governments,

- a. Increased funding needs to be clearly allocated within state and federal governments for assistance at school for students with disability, as the major hurdle appears to be in providing sufficient funding for supports such as aides, specialised equipment, training for teachers and other necessary adjustments to allow students with disability to fully participate in their education. As noted in the General Comment on Education by the CRPD, "comprehensive and coordinated legislative and policy framework for inclusive education must be introduced, together with a clear and adequate time frame for implementation and sanctions for violations. Such a framework must address issues of

flexibility, diversity and equality in all educational institutions for all learners and identify responsibilities at all levels of government.”²

b. schools and communities, and

- b. Schools and communities need to focus on the benefits to their diversity of being inclusive and promoting appropriate inclusive education for all. This needs to be demonstrated from a high level of government as well as encouraged throughout all levels of schooling.

c. individual classrooms, to ensure an inclusive education system at all levels?

- c. Individual classrooms are where the major barriers to inclusive education appear. Funding for training, re-modelling curriculums and individual support for teachers needs to be prioritised to ensure that teachers understand what inclusion is and how to actually ensure it occurs in their classrooms. Incentive schemes and bonuses should be connected to innovation and excellence in this area.

11. What is essential to facilitate the transition from segregated or integrated settings to inclusive education settings, and to sustain the change?

Funding and leadership from the top is required to ensure the appropriate use of inclusive education. Both state and federal governments need to prioritise the re-development of educational systems to facilitate proper inclusion. Recruitment and retention of teaching staff needs to focus on training and incentive schemes around inclusion in the curriculum and teaching. Regular and appropriate monitoring of schools to assess their inclusiveness needs to be established and respected.

As noted by the CRPD in its General Comment on Education, “Monitoring: as a continuing process, inclusive education must be monitored and evaluated on a regular basis to ensure that neither segregation nor integration are taking place, either formally or informally. According to article 33, monitoring should involve persons with disabilities, including children and persons with intensive support requirements, through their representative organizations, as well as parents or caregivers of children with disabilities, where appropriate.”³ Therefore we submit that it is vitally important that parents of students with disability, students with disability themselves, and other representative disability advocacy groups, be encouraged to be involved in developing more inclusive education models, including as a result of this Royal Commission.

12. What is the impact of inclusive education on the life course outcomes (including learning and employment outcomes) of students with disability? And students without disability?

² Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [16].

³ Committee on the Rights of Persons with Disabilities, *General comment No.4 (2016) on the right to inclusive education* (CRPD/C/GC/4, 25 November 2016) [5].

The impact on students with disability of inclusive education is positive, if the education is done properly, as it allows them to develop their own interests, learn at the appropriate level, and finish their education with a sense of self and achievement that can lead to further appropriate education and employment outcomes. Inclusive education can also benefit students without disability by demonstrating diversity and inclusion, and providing alternative ways of learning which can benefit all students.

13. How does inclusive education promote a more inclusive society?

Education settings are where children learn about society, difference, social interaction and their peers. Children are malleable and sponge-like, soaking up experiences and information without pre-conceived notions, therefore they accept as normal what is presented to them in their life experience. Providing inclusive education allows children to experience and accept difference as it is modelled to them as normal, lessons which they can then take to the outside world as they grow older, which in turn can hopefully lead to greater inclusion in society. It also allows students with disability and their wider support networks to see how inclusion can work in practice, which they can then take with them to advocate for greater inclusion in other settings such as employment, sport, entertainment, socialising and lifestyle.

Thank you for this opportunity to submit to the Royal Commission, and we look forward to future contributions.



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