

Submission to the Legislative Council Legal and Social Issues Committee

13 October 2023

Inquiry into the state education system in Victoria



Inquiries to:
Julie Phillips
Manager
Disability Discrimination Legal Service

Disability Discrimination Legal Service Inc
c/o Ross House Association, Inc.
247 Flinders Lane
Melbourne, 3000 VIC
Ph: 03 9654 8644
Fax: 03 9639 7422
TTY: 03 9639 7422
Country: 1300 882 872
Website: www.communitylaw.org.au/ddls
Email: info@ddls.org.au
ABN 36 079 687 722

1. The Disability Discrimination Legal Service ('DDLS') is a community legal centre that specialises in disability discrimination legal matters. The DDLS provides free legal advice in several areas including: information, referral, advice, casework assistance, community legal education, and policy and law reform.
2. The long-term goals of the DDLS include the elimination of discrimination on the basis of disability, equal treatment before the law for people with disability, and to generally promote equality for those with disability.
3. In the last 10 years, there have been a multitude of reports from statutory authorities, parliamentary committees and human rights organisations with significant criticisms of the Victorian government education system, including accusations of violence against children with disabilities.
4. The Victorian Senate inquiry into services for autism¹ was damning in its critique of numerous service areas and their treatment and outcomes for autistic people, including education.
5. Federal reports that set out findings about Australia wide services, (many submissions being from Victorian), on disability and education, disability and employment, violence abuse neglect and exploitation of people with disability, all provide evidence of the continuing discrimination against and mistreatment of people with disabilities.²
6. The links between poor education, disability and the criminal justice system are well documented.³
7. Looking at our data over the last 10 years, education complaints of discrimination have risen, and the Department of Education has been our single most common Respondent.
8. For the purposes of this submission we concentrate on the wellbeing outcomes for students with disabilities in the Victorian education system, assuming that their treatment is a matter of fact and does not need to be reiterated to any great degree.

¹ www.parliament.vic.gov.au/assembly/publications-a-research/fact-sheets/400-fcdc/inquiry-into-services-for-people-with-autism-spectrum-disorder

² The Senate Select Committee on Autism "Services, Support and Life Outcomes for Autistic Australians"

The Senate Education and Employment References Committee "Access to real learning: the impact of policy, funding and culture on students with disability"

The Senate Community Affairs References Committee "Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability"

³www.unodc.org/dohadeclaration/en/news/2017/02/education-as-a-tool-to-preventing-crime-and-promoting-a-culture-of-lawfulness.html

Education and well-being outcomes for student's disabilities

9. We comment below on matters previously brought to our attention, some consistently over a period of years.

Restrictive Practices

10. DDLS stands with the Victorian Equal Opportunity and Human Rights Commission and Office of the Public Advocate in calling for the end of seclusion/false imprisonment in Victorian Government Schools.
11. We regard the current numbers⁴ of students with disabilities annually being restrained and locked up in schools, a state emergency.
12. We regard the current absence of guidelines in relation to where a child in a Victorian school can be locked up, and under what physical conditions, as reckless.
13. The absence of proactive and preventative directives to school staff⁵ in response to behaviours of concern and/or a first instance of physical restraint, indicates that the Department of Education endorses repeated physical restraint as an easier option. We submit that this preference of violence over intensive behaviour support constitutes inhumane and degrading treatment, in breach of numerous domestic and international legislation.
14. These issues have been raised repeatedly for more than ten years with the Department of Education.

Suspension/Expulsion

15. We note that the minority group with the highest representation in expulsions is students with disabilities⁶. This number should be seen as under representing students with disabilities, as it only includes students with disabilities receiving funding under the Program for Students with Disabilities, a funding program which only funds students with moderate to severe disabilities.
16. These outcomes are similar to that found by the Victorian Ombudsman in 2017⁷. It is unclear as to why students with disabilities (and the other recorded minority groups who are already disadvantaged) ought to be expelled, when it

⁴ <https://www.vic.gov.au/statistics-victorian-schools-and-teaching#restraint-and-seclusion>

⁵ Department of Education Restraint and Seclusion Policy
<https://www2.education.vic.gov.au/pal/restraint-seclusion/policy>

⁶ <https://www.education.vic.gov.au/Documents/about/department/expulsion-data-snapshot-2021.pdf>

⁷ <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-victorian-government-school-expulsions/>

would be reasonable to infer that the Department of Education's lack of support of such students, on record for many years, contributes to disengagement.

17. Given students are usually suspended before they are expelled, it should be inferred that suspensions are also disadvantaging minority groups including students with disabilities.
18. As the research on the detriment of suspension is clear, it is disturbing that it continues to be used prolifically with students with disabilities. *“School suspension - the temporary removal of a student from school - is one of the most severe responses to student misbehaviour in Australian schools. Evidence suggests school suspension is associated with negative behavioural outcomes in adolescence”*⁸.
19. This research outcome has been available for over decades, via many domestic and international research papers. One then has to question why suspension and expulsion continue to be used as “strategies” for disadvantaged groups (or any student for that matter). It is unclear why the Department of Education uses practices that have no evidence base, and indeed the evidence is they are harmful.

Right to be educated

20. The abandonment of education in “special” schools which segregate students on the basis of their disabilities away from their nondisabled peers, has been raised prolifically, and most recently with the Disability Royal Commission.
21. The Victorian Curriculum is not available to many students with complex disabilities, about whom assumptions are made about their capacity, resulting in “life skills”, that are often missing the essential ingredients to access “life” - being basic literacy and numeracy.
22. Students attending segregated schools will have a range of capabilities. For some it may be the learning of vocabulary that covers basic items such as food, drink etc. However when this type of limited teaching is applied to everyone in a school, where the curriculum does not actually contain academic lessons which prevents a person's capacity from even being identified, then this is a removal of the right to be educated.
23. There does not seem to be any oversight of curriculum delivery in segregated schools. This includes a lack of oversight of whether students who do not speak are being provided with appropriate communication devices, and more importantly, being taught via such devices in every class, every day.
24. It is not possible to be educated without communication.

⁸ Australian Institute of Criminology “Trends and issues in crime and criminal justice” No 531 June 2017

Failure to provide reasonable adjustments/funding

25. Students with disabilities are commonly been denied reasonable adjustments. We can only assume that this is for reasons of funding, rather than any deliberate attempt by teachers to not support them. We are aware that the disability funding system has been changed by the Department of Education since 2021, but that has not affected families of students with disabilities approaching us with the same complaints of failure to provide reasonable adjustments that we have heard over the last 15 years.

Recommendations

It should be noted that many of these recommendations include independent persons and bodies being involved. This is due to the fact that the above issues have been raised for many years by many bodies, without any improved outcomes for students with disabilities. We submit it would be reasonable to infer that the Department of Education does not have a willingness to alter the status quo.

Recommendation 1

Seclusion of students with disabilities (and all students) be prohibited immediately.

Recommendation 2

An external body including representatives of human rights organisations and certified behaviour analysts develop new behavioural/restraint and seclusion policies that are imposed upon the Department of Education to protect students from injury and death.

Recommendation 3

Suspension and expulsion procedures/Ministerial Order be changed to direct school staff to provide students with behaviours of concern at least the following supports prior to suspension/expulsion:

- a) Independent communication assessment with recommendations implemented
- b) Engagement of an independent certified behaviour analyst to work intensively with the student/school
- c) Independent functional behaviour assessment, informing a behaviour intervention plan
- d) Multidisciplinary team meeting to determine educational supports.

Recommendation 4

A review of how curriculums are determined in segregated schools, with independent inclusion experts advising as to how the Victorian Curriculum can meaningfully be taught to students with disabilities.

Recommendation 5

In line with our legal obligations through our signing of the Optional Protocol of the Convention on the Rights of Persons with Disabilities, a plan be written with the aim of closing segregated education institutions.

Recommendation 6

An independent review of school funding involving school principals, concentrating on schools' ability to adequately support students with disabilities (and their teachers).

Recommendation 7

A policy to be in place that supports the right of students who cannot speak to functional communication within educational settings, to be developed with Speech Pathology Australia.

Recommendation 8

An inquiry into the Department of Education which involves speaking to advocates, students with disabilities and families of students with disabilities which centres on why there is little improvement in the outcomes for students with disabilities, in the context of the Department of Education being willing to engage in and spend money on legal proceedings, year after year. We submit that a review of that approach is reasonable and necessary.

Recommendation 9

Educational authorities should have the burden of proof in disability discrimination cases.