Commissioner for Children & Young People

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Dear SEE Inquiry Team

The South Australian Commissioner for Children and Young People is an independent statutory position, established under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* ('the OAB Act'). A key objective is to place the interests, development and wellbeing of children and young people at the centre of public policy. The Commissioner's role includes advocating to decision makers to create laws, policies, systems, programs and practices that protect the rights and interests of South Australia's children and young people. The advocacy is led by the views and voices of children and young people.

The Commissioner also monitors organisations to ensure that they comply with the United Nations Convention on the Rights of the Child (CRC) under Section 5 of the OAB Act and other relevant international Instruments.

There is also a general duty of every person in this state to ensure that the government's promise to children is kept. Under the *Children and Young People (Safety) Act 2017* (Safety Act) there is a promise to provide all children to live safe from harm; to do well at all levels of learning, to have skills for life; and to be active citizens who have a voice and influence. The Safety Act also makes a promise to protect the wellbeing of all children, particularly those at risk.[1]

The new *Education and Children's Services Act 2019* (the Act) appears to build upon the previous two acts and has been described by both sides of government as "providing a contemporary framework for the delivery of high-quality children's services and compulsory education in this state."[2] As the Hon. J. Gardner has made clear, the new Act embeds "various principles that must be taken into account in relation to the operation, administration and enforcement of the bill. Most notably, the bill provides that

[1] Section 4(2) of the *Children and Young People (Safety) Act 2017* as well as the Section 9, "Without limiting a provision of this or any other Act or law, State authorities whose functions and powers include matters relating to the safety and welfare of children and young people must have regard to the fact that early intervention in matters where children and young people may be at risk is a priority."

[2] Hansard, Rob Lucas MP, dated http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-24938

the best interests of children and students are the paramount consideration."[3] Further, the voice of children and students (and their caregivers) must be heard in decisions pertaining to the Act.

It is pleasing to see that the new Act reinforces the CRC. These rights include the right to an education (Article 28), the right that education should develop each child's personality and talents to the full (Article 29) and the right that children should have a say in the decisions that affect their lives (Article 12). The new Act is an opportunity to build a contemporary rights based framework around exclusions which is inclusive for all children and for these rights and principles to be embedded into policy, practice and culture.

In my role as Commissioner, children and young people have told me they're concerned about who is excluded from school and what support they receive to remain engaged with their education. They talk about inclusion, not exclusion. Doing things that "help everyone get an education" is one of the top five priorities that children and young people have identified for my work.

Children and young people want to 'help' students who are having difficulties at school because of their background, disability, things happening at home or poverty. There was a strong belief that students, particularly the most vulnerable, should be included rather than excluded, dismissed, stigmatised or "left behind".

"More effort needs to be put into the schooling system. So many kids are left behind so I think that more support needs to be given to kids with learning difficulties such as dyslexia so on. I also think that our current education system needs some services up dating cause there are so many children suffering because of it! Also more support for teenagers with mental disorders such as anxiety, depression as a result of school and home life".
Student, Canteen

"Improve education – in general, rise standards of education – Equal opportunities for all children, no matter where you live, how much money you have. Improve education in rural areas – introduce highly educated teachers which they wouldn't normally have. Equal opportunities."
15 year old student, Scotch College

They also want principals and teachers to trust that they can be part of the solution as well and help these students.

"Help "bad" students instead of just giving up on them and sending them straight out. For example; I have witnessed "bad" students struggling and see them about to get into trouble but then I assist the student and they actually end up listening to me and I am able to get the student interested. This may be due to me being a student and understanding a student's interests more. Maybe it should be recommended that the struggling students get a peer to help them, that is not struggling."
Student, Paralowie R-12 School

[3] Hansard, Gardner J, dated http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-11-34874

Commissioner for Children & Young People

This submission will bring forward the voices of 22 families and children I have talked to over the past year who have experienced both informal and formal exclusions (by exclusion I mean suspension, exclusions and expulsions). The result of these exclusions has not only adversely affected the wellbeing of the children, but family dynamics, including the ability of parents to work and support the family and the relationships between siblings and extended family. In the submission below I will talk more about the impact these exclusions have had on everyone in the family, as well as the child themselves. I will also provide some feedback on actions that families say work.

Yours sincerely,

Helen Connolly
Commissioner for Children and Young People
Adelaide, South Australia

The exclusion experience

This submission focuses on school exclusion through suspensions, exclusions, and expulsions as well as more in-formal processes for removing children from the classroom. All children have a right to an education and it is well-known that outlook for children who don't receive a solid education is poor. Our fundamental purpose must be to ensure that every child, no matter their circumstances, receives the education they have a right to.

Over the course of the past year I have talked to 22 families on this topic. I consistently heard of exclusions resulting from a one-size-fits-all approach to behaviour management that fails to take account of children's specific needs and context. I particularly heard of children and young people with medical conditions, developmental and other needs that were not being met or understood by schools.

What these families had in common was having a child who'd experienced exclusion. Otherwise, they were surprisingly diverse. Children came from single parent families, dual parent families, blended families and long term foster families. Some children had extended family networks, other families were on their own. A small number of children had a child protection history. Some children had parents who worked, some did not. Some parents hadn't finished school, others had professional qualifications.

Of the 22 children, the youngest age a child was first excluded was four and the average age of first exclusion was eight and a half. Eighteen of those excluded were boys and 4 were girls. In just under 75% of cases, exclusion resulted from a child's aggression towards another child or person at the school.

Most children had something significant going on for them that played a direct or indirect role in their exclusion incident. Eighteen children had one or more diagnosed medical conditions. Eight had a formal diagnosis of Autism Spectrum Disorder (ASD). Four had Attention Deficit Hyperactivity Disorder (ADHD). Only three children had neither a formal diagnosis nor obvious external factors that might have contributed to their behaviour at school. Overwhelmingly, these children were excluded because of circumstances beyond their control and a lack of adequate support to regulate their emotions in the school environment.

Only three children had neither a formal diagnosis nor external factors that might obviously have contributed to their behaviour at school. However, one of these children had a strong sense of 'moral justice' that played a causative role in their behaviour in responding to what they perceived as unfair or bullying behaviour.

The majority of decisions to suspend or exclude a child were made by the school without the family's involvement. This meant that where the child or a parent had alternative or contextual information relevant to how an exclusion incident was being assessed, it wasn't considered. Whilst families sometimes agreed with a school's decision to exclude, none of them felt that the process used to make these decisions offered appropriate standards of due process and natural justice.

Families and children felt isolated and unsupported during the exclusion period. Only some families reported receiving schoolwork for their child during periods of exclusion and none of these considered the work to be adequate.

Schools should be working with families during exclusion to create a student development plan, addressing causes and identifying goals and the supports required to achieve these. Hardly any families reported this as a collaborative process, with most reporting that re-entry plans were given to them to sign without negotiation and little to no follow-up. None of our parents felt that, in its current form, exclusion achieved any positive long-term outcomes and many were able to identify deleterious effects for their children.

Exclusion affected how many children saw themselves, encouraging them to adopt the idea that they were naughty which negatively impacted their self-esteem. Some children experienced mental health

issues including anxiety and depression as a result of their exclusion. Children were isolated from their social groups. Whilst some children preferred to be at home, others definitely didn't.

Families reported that the emotional effects of exclusion could exacerbate existing behavioural challenges, exporting this back into the home environment. It also often created jealousies and tensions between siblings.

Children and parents worried about the impact of exclusion on educational progress. Parents became particularly anxious about their child's long-term prospects where exclusions were repeated. Exclusion tended to trigger feelings of disengagement with education for some children, whilst others felt disillusioned and unwanted in the school environment. These sentiments reflect what thousands of children I have talked to say: they are at a loss to understand why adults think excluding them will correct their behaviour. More often than not, children have told me that it makes them "hate" teachers and schools even more.

Most families felt children simply returned to the same situation at school as had led to their original exclusion. Even where additional supports were provided, no family felt confident that they were sufficient to avoid future reoccurrence. Many families felt their child's exclusion had an ongoing effect on how they were perceived and treated by school staff.

Parents were also concerned about their own ability to maintain commitments, particularly employment, in the face of repeated exclusions. Of the 17 parents who were in work when exclusions commenced, all had their employment disrupted to some extent due to the need to care for children during school time. Five mothers had to give up work entirely, either in whole or in part (one) due to exclusions. Another had to halve her working hours. Two mothers wishing to move into work identified ongoing school exclusions as an unresolvable barrier to employment.

Whilst some children had spent time in the private education system, almost all of the children whose families we spoke with either were or had most recently been in the public education system. In some instances, children were refused entry to independent schools or families were actively advised that the public school system was better equipped to meet their child's needs.

Interestingly, only one of the children whose stories we reviewed was ever formally expelled from a school. However, numerous children were informally excluded and had to move schools multiple times after parents were advised that the school in which they were enrolled could no longer meet their child's needs. In some of these instances, after multiple such notifications, children did not return to regular school attendance.

It's difficult to identify the maximum number of exclusions received by any child, not least because families are often confused as to the nature of exclusions and when they have occurred. This goes to the issue of inconsistent communication around exclusions raised with us by many families, and the fact so many exclusions occur ad hoc through informal exclusion practices that remove a child from the classroom, but not the school campus.

Overall there were five major concerns that families had were the lack of due process, lack of re-entry planning, the lack of understanding by schools of the stress exclusions can have on children, using behaviour policies and practices which clearly do not work and the lack of recognition by schools of the impacts of families. These are discussed in more detail below.

The lack of due process and procedural fairness in the exclusion process

Universally, families were frustrated by the lack of negotiation in exclusion decisions and confused about the process through which these decisions were made. Many felt that there was a lack of due process. They said that they lacked a voice in the process, as an advocate for their child, but also as someone who could provide further context for their child's behaviour. For children, not having their experience reflected in the decision-making process left them with a strong feeling of unfairness and injustice which heightened any negative responses to exclusion.

For our families, notification of exclusion sometimes came verbally and sometimes in writing. Sometimes it came on the day of exclusion and sometimes it came the day following, after the child had already arrived home and spoken with their parent. In the case of informal exclusions, advice would often arrive through a phone call from the teacher requesting a parent to collect their child from school. Alternatively, a parent may find out about their child's informal exclusion when picking their child up at the end of the day.

In at least seven of the instances of formal suspension or exclusion that this office reviewed, parents or advocates sought a further conversation with the school about whether exclusion was the most appropriate response to the behaviour in question and requested their child have an opportunity to be represented in the process. In six instances, schools are reported to have advised that suspension was non-negotiable and/or a matter of policy. In one instance, the proposed period of suspension was reduced, but not waived.

The lack of planning for re-entry and support for children when they return to school

Families expressed concern about the lack of collaboration and planning and re-entry for their children. During any period of suspension, the school should conduct a problem-solving conference with the student and their parents or carers which results in an agreed student development plan. This should address the reasons for the suspension, set behavioural and learning goals, identify supports for the child to achieve these and outline what will happen if things don't improve.

Only two of the stories we received reflected the type of collaborative negotiation and discussion that the above process implies. The family that reported the highest levels of engagement and support noted that this had been received largely thanks to Aboriginal support staff in the school. Most families felt very isolated through the exclusion period, as did most children.

Children have a right to an education, but almost all of the very small number of children whose exclusion was for multiple weeks were immediately or eventually enrolled in another school or centre through which they received education services. All other families reported little or no contact from the school and no or inadequate homework provided to children to ensure their continued learning. Those families who did receive work for their child had to ask for it.

When families spoke of meetings attended during or at the end of a child's exclusion, it was of "re-entry" meetings rather than development planning. Almost exclusively, they reported being given agreements to sign by the school, rather than negotiating them. Many noted their children didn't understand the agreements provided and parents felt unable to refuse them.

Schools not recognising the stresses on children in re-entry and return

Due to the processes used by the school, most families felt that their children were returning into the same situation that had led to their exclusion without restoration or redress. Many children felt anxious about their re-entry to school. They worried about responses within their friendship groups, either due to the reasons for their exclusion or the associated social stigma.

Whilst some of the families we spoke with discussed additional supports provided to assist a child's re-entry, none of these felt confident that they were sufficient or would avoid future reoccurrence of the issues that led to the earlier exclusion. Many children and families felt a loss of faith with the school and a sense of rejection through the exclusion process.

Many families reported that the fact of their exclusion affected how children saw themselves. Children who struggled to regulate their emotions, or to focus their attention in the classroom, quickly adopted the self-concept of being bad children, naughty, and unable to behave. Children with experience of family violence and trauma tended to attach this new understanding of their character to exemplar models from their past, which reinforced their changed view of themselves. Many older children experienced anxiety and depression in connection with their exclusion.

Parents were concerned that the stigma of exclusion, combined with a medical diagnosis, would following their child throughout their schooling. Many felt that once exclusions started, their child became an easy target for blame when future incidents occurred. Some families reported that when things went wrong within a group of children, theirs was often the only child to receive punishment or exclusion. One parent even reported their child being held responsible for an event that occurred at school when they were not actually on the campus.

Schools continually using the same behaviour practices which have been proven by research to simply not work

As families told us, if exclusionary approaches to behaviour management have already been tried and failed with a child, simply repeating them is unlikely to achieve a different outcome.

Many parents reported schools consistently using strategies to remove children from the classroom without associated practices to keep them engaged in learning. These included sending children to the front office, or to a classroom to sit with a teacher or counsellor, or into a confined space such as a courtyard where children could be observed from within the building, or placing children on restricted hours of school attendance. Parents recognised these as informal exclusion processes and felt they were over-used as strategies. Rather than achieving positive effects, many parents felt they were damaging in the medium or long-term for their child.

Parents, who should be seen as a resource for schools in understanding children's behaviours, needs and context felt they were ignored rather than engaged in the process. This leaves them sharing their children's feelings of resentment and hurt. Worse still, it ignores a potentially powerful ally and partner in the interests of children who often require long-term strategies and consistent communication and boundaries to support their positive development.

The apparent lack of regard by schools on the wider impacts of families

Families reported the practices of exclusion and their emotional effects upon children as exacerbating any behavioural challenges already being experienced.

Siblings, and sometimes children themselves, would feel that extra time at home was more reward than punishment. This would often result in resentment and conflict, which parents were again left to resolve. Even for those children who preferred to be out of school than in it, boredom would flourish in the absence of adequate or appropriate homework or other educational engagement

Almost all of the children whose stories we reviewed were already struggling to keep pace academically with their peers at the time of their exclusion. Their disability, a difficulty in remaining focussed at school, or external factors impacting on their lives which played a role in the events leading up to their exclusion had already put them on the back foot.

Almost every family reported that their children fell further behind academically as a result of exclusion, losing ground that they were never able to regain upon returning to school. In almost all instances, this directly impacted how the child viewed schooling and often commenced or escalated a process of educational disengagement.

Schools are required to provide educational materials to these students, however it appears that these materials are not adequate and do not help them keep up with what their peers are learning at school. It is clear now with what schools are doing to ensure children during this time at home are provided with an education that what is being provided to children experiencing exclusion is simply not good enough.

Some children simply didn't want to be somewhere they felt they were no longer wanted. Others struggled with what they saw as the school's unfair treatment of them compared to other students,

and this affected their relationship with the school. Some simply felt that school was an unsafe place to be, as a result of previous bullying or adverse experiences, and a handful actively avoided returning.

Children also experienced high levels of social withdrawal and disconnection during periods of exclusion, resulting from shame as well as the practical effects of not having daily contact with peers and friends. This would further increase the time children spent at home and in solitude, exponentially adding to the impacts of exclusion and, for many children, the underlying causes that led to it.

Despite this, there were a few stories where schools actually worked with families to ensure long term inclusion. I also received feedback from families and children of what they want to see schools do when if they are considering excluding as student. This consists of two elements which could help to re-engage children and families and could increase trust with a school and the education system generally.

Listening and encouraging open dialogue

Some families experienced pockets of positive engagement with their school, either through support staff such as Aboriginal support workers, or a particular teacher or principal who was sympathetic and made proactive efforts to engage with a particular child or family. However, such cases were atypical, with the more common experience being that families and children felt sidelined and ignored in the exclusion process.

Our parents rated their ability to understand the factors that may have led to their child's behaviour. They had additional context that they believed could be valuable, including information on their child's behaviour outside of the school environment. They wanted an opportunity to share these with the school and - for those who'd made great efforts to do this - they wanted to feel that the school had listened to and placed some value on their input. In short, parents wanted schools to see them as a partner in supporting their child.

Parents also wanted their child to have a voice in the exclusion process. In many instances, parents reported that either they or their child felt that an exclusion had been unfair. Often, they felt exclusions were based on a misunderstanding by the school of actual events because their child had not had an opportunity to provide important information or context.

They felt a genuine dialogue with their child prior to exclusion would have helped build understanding, for both the child and the school. Some felt this might help avoid what they saw as an over willingness for children to be branded 'naughty' and a lack of effort spent to appreciate a child in their context and the factors that surrounded, and may have prompted, their behaviour.

Parents wanted to ensure that teachers who were making exclusion decisions were fully-informed of their child's circumstances. This might mean being familiar with a child's One Plan, knowing their diagnosis where there was one and, better yet, understanding its implications for a child's behaviour. It might mean understanding what is going on for a child outside of school, and how their history might offer context in assessing the meaning and intention behind a child's actions.

Parents wanted teachers to talk to each other as well. They wanted them to share information about children and what works for them - what kind of treatment might trigger a child and what strategies proactively help them to self-regulate within the school environment. Many parents felt that a better understanding of their children would have helped avoid past exclusions and would also help avoid things going wrong in future.

Learning from parents

Many parents felt that a better understanding of their child's needs might help avoid exclusions occurring, they also felt that when exclusion was genuinely an appropriate and proportionate response to child behaviour it should be used judiciously to build their child's understanding. They commonly saw

exclusion meetings and the broader exclusion process as a lost opportunity to engage children in learning and long-term behaviour change.

Most parents wanted schools to use approaches that would keep children on campus whilst responding to the causes of a child's behaviour. This would avoid absence from school being experienced as a reward for children who preferred being out of the school environment. Where it was necessary and appropriate to implement consequences in response to an incident, families wanted these to be tailored to their child's behaviour rather than through a one-size-fits-all approach, as a means of maximising beneficial outcomes.

Where exclusion-related meetings were held with children, parents wanted schools to run processes that worked to achieve children's comprehension, not simply compliance. Often, children didn't understand why they were being excluded, and in some cases even felt that the premise of their exclusion was unjust. Families said that if they didn't understand exclusion decisions and processes themselves, it was hard to see how their children might.

Just as they wanted schools to engage proactively in preventative strategies to support their child's positive behaviour within school, families wanted follow-up activities resulting from behavioural incidents to be specified, communicated and actioned by the school in a timely manner. They wanted these supports to be designed on the basis of their child's needs and context, and applied consistently across the school.

As has been demonstrated in the submission, parents themselves are carrying a heavy burden, on behalf of the education system and in addition to their ordinary duties as parents. They are losing out on social and economic opportunities because they cannot be assured that the place they drop their child to at the beginning of the day will keep them there until 3pm. They are also being subjected to ongoing anxiety and concern about their children's future outcomes if they cannot secure a decent education.

This is not a matter of tension between the role of schools vis-a-vis families; this is about the fundamental ability of schools to provide a learning environment capable of adapting to the diverse and substantive needs of the children they are tasked to educate. If we are unable to find a way of ensuring that schools provide an inclusive, safe and nurturing environment for all of the children who need them, we are at risk of creating a group of children deemed uneducable by our education system, with the inevitably bleak future that entails.