

18th October 2019

Hon Ronald Sackville AO QC

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

Via email: DRcenquiries@royalcommission.gov.au

Hon Ronald Sackville AO QC (Chair),

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

As South Australia's Commissioner for Children and Young People, under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) I am mandated to promote and protect the rights, interests and wellbeing of all South Australian children and young people (birth to 18 years). It is also my role to ensure that the State satisfies its international obligations under the United Nations Convention on the Rights of the Child (CRC).

Since commencing in this role, I have spoken face to face with thousands of South Australian children and young people and have heard from many more on a wide range of issues that are important to them. Children and young people have consistently told me that they are concerned about who is excluded from school and the support they receive to remain engaged with their education. Consequently doing something to "help everyone get an education" is one of the top five priorities that children and young people have identified for my work.

The work that I have undertaken so far, in investigating exclusionary practices in education, has highlighted a concerning connection between exclusions and children with a disability. The practice of excluding children and young people from school, whilst purporting to be a behaviour management strategy, systematically discriminates against children with a disability and complex problems, and creates the conditions for further behavioural issues. It also reduces the likelihood of continued engagement with mainstream education. Often this has a 'domino effect' causing substantial hardship and stress elsewhere in the child's life and that of their family and carers.

In the conversations I have had with children, parents and advocates on exclusions, I have heard of specific instances of exclusions that deny fundamental rights of children with a disability, including the right to an education. Additionally these exclusions are often conducted in a manner that reduces the capacity of schools and families to work together to provide the supports needed. More often than not, these processes also ignore the voice of the child as well as the specific circumstances that gave rise to their behaviour and the exclusion in the first instance.

The work that I have undertaken in this area to date has looked at the occurrence of both informal and formal exclusions. Formal exclusions are defined within the South Australian Education system and relevant legislation, while informal exclusions I have used to describe a more ad hoc process of removing a child from the classroom or a particular school space. To assist in the current Royal Commission, I have provided the following feedback based on what I have heard from children and young people, their families and their carers in line with a contemporary understanding of the rights that support their views.

United Nations Convention on the Rights of the Child	Convention on the Rights of Persons with Disabilities
Article 28: Right to education Article 29: Goals of education to the development of children to the fullest potential	Article 24: Education, equal and inclusive access to the lifelong learning Article 5: Equality and non –discrimination

Children and young people with a disability have a right to an education under both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. These rights can be denied when a child is prevented from attending school or denied access to learning opportunities and materials.

The experiences of excluded children and young people that I have reviewed raise a number of concerns about the rights of children and young people with a disability in education. Of the 22 cases that I reviewed in detail the average age of first exclusion was around eight and a half years old, with at least one instance of a child being excluded in the first year of schooling. These are times when most children are still developing an understanding of how their behaviour impacts others as well as themselves.

Crucially a vast majority that had been excluded had previously been diagnosed with a disability, such as Autism Spectrum Disorder, Global Developmental Delay, or otherwise had particularly complex needs that required specific care and attention. Their exclusion prevented them continuing with their education and in a number of instances this extended beyond the exclusion period.

Children that were excluded were often done so without adequate work being provided to them. This meant that these children were unable to continue with their education during the exclusion period. In the cases where work was provided this was usually completed within the first moments of the exclusion (often leaving them bored) and was insufficient to stop the child from falling behind their peers. This is especially impactful when some of these children should have also had access to time with an SSO. The longer term impacts of this meant that the excluded children and young people became further disengaged from education as their peers moved ahead, which in some instances created a circular pattern of repeated behaviours and exclusions.

Other children and their parents found themselves in a pattern of continued movement, moving from school to school, once it became apparent that the school was unable to address the needs of the child. This was highlighted at the point of the exclusion, however indicators of this would have likely been evident earlier, to both the school and educators, if staff had been sufficiently trained and aware of the child's unique background.

Although students with a diagnosed disability that were excluded had a Negotiated Education Plan, referred to as 'One Plan', outlining how the school was going to address their needs, not all educators appeared to be aware of the child's diagnosis or their specific needs. In one instance a child had his SSO support reduced, well below what was originally agreed to, even after the child had first been excluded. This lack of understanding of the child specific needs placed these children, and particularly those that were developing an understanding of social skills at a greater risk of being excluded from education.

United Nations Convention on the Rights of the Child	Convention on the Rights of Persons with Disabilities
Article 3: The best interests of the child Article 12: Right to be heard	Article 7: Children with disabilities best interests of the child and the right to be heard

Schools and the education system should work towards what is in the best interest of the child. This includes giving children and young people the opportunity to have input into the decisions that affect them.

In a significant number of the cases that I have reviewed, children and young people with a disability, or their parents or carers, have not had the opportunity provided to discuss the best measures to manage behaviours. This has a profound impact on children and the identity that they adopt for themselves, with some feeling as though they are incapable of 'doing good' or are 'inherently bad'.

For these children this had a significant effect on their broader wellbeing, causing some to act out or express themselves through behaviours that are more problematic. Whilst many children reportedly understood the need for consequences for their behaviours, the gravity of the response and reasons were not always explained to them, further entrenching a feeling of unfairness and disproportionality in the schools response. Further, these children were not asked about the supports that they needed to ensure they are able to effectively manage their behaviours themselves, or address underlying issues.

In another situation, a clear need for extra support had previously been flagged for the school. A child with a diagnosed disability was experiencing distress after receiving upsetting news from the Department for Child Protection; having externalised this towards a

staff member the school responded punitively. The child was not given an opportunity to express their feelings, nor did the school appear to be there for the child, probably when they needed it the most, to ensure that they were supported to deal with difficult news. Additionally, the school appears not to have given any consideration to the broader circumstance of the child when it decided to exclude them.

Had the child's best interest been at the forefront of the decision regarding exclusion, with a regard to their circumstances, it is hard to envisage how the same decision would have been made. This seems representative of a broader lack of consideration of the child and how their education, wellbeing and interests might be best managed following an upsetting event in a child's world.

A common theme of the cases that I have reviewed has been a lack of engagement with family or carers prior to the exclusion. In a number of instances this meant that a parent or guardian had to take time off work to supervise their child during the exclusion. This resulted in greater financial stress and well as relational stress between the child and other siblings, jealous of the fact that they did not have to go to school.

In many cases the exclusion did not assist at all with future behaviour management. Some children became further distressed at school and felt more outcast by the schools response to them. This cemented a desire to behave in a way that meant they could return to their home environment. For other children, being sent to the home environment led to greater stress which in turn affected their ability to engage at school.

Further, direct engagement with the child and their parents and carers could have resulted in significantly less stress being placed on the child, as well as the child's family or carer, in response to the exclusion.

Lack of clear processes

The lack of engagement with the child is reflective of the decision making process in schools on exclusions. Through this process the school effectively acts as the "judge, jury and executioner", whereby decisions are not made independently, transparently or with due process and procedural fairness. When combined with an often punitive approach to behavioural management, this particularly disadvantages children and young people with a disability, many find it more difficult to understand social cues or have different developmental progress to that of their peers.

There does not appear to be sufficient due process or procedural fairness in the way in which schools handle exclusions. This is exacerbated by an unclear appeal process. In the cases I reviewed most families noted that their child was not given an opportunity to provide their side of the story. Once a decision had been made by the school, it was considered final.

Additionally, parents were not involved when the school decided that their child should be excluded, often being called up without notice. This left a significant number of parents having to take time off work at no notice, or in one instance give up their job completely causing damage to family stability.

Behaviour management strategies with this type of consequences do not lend to improved outcomes. Rather, for some children and young people, this can make them more susceptible to repeated exclusions. Moreover, this can have the effect of de-incentivising some schools to take action to make the environment and conditions more inclusive for that child. A lack of transparency and appeal mechanisms for children, parents and carers and other staff exacerbates this.

Further, when schools or staff are feeling overwhelmed or are untrained in recognising some behaviours, this creates the perfect conditions for exclusions to act as an impulse response. This can result in multiple exclusions without any additional supports being put in place, which may continue even if the child's behaviour and social skills are improving - particularly once community or staff have labelled the child as "troublesome". This requires addressing at a systemic and school level where children in need of additional support may have a 'reputation' that precedes them, even when parents are attempting to relocate to a new school.

There are examples of more effective processes in place with regards to students facing exclusions in other jurisdictions in Australia, however these are currently not standard in South Australia. Without process safeguards in place, exclusionary behaviour management will continue to particularly disadvantage children and young people with a disability.

I trust you will consider this input in detail. If you have any questions or would like to discuss this in more detail please do not hesitate to contact me.

Yours sincerely



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