

Submission to Commonwealth Department of Education

NSRA.submissions@education.gov.au

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National School Resource Agreement



[Redacted text block]

Disability Discrimination Legal Service Inc
c/o Ross House Association, Inc.

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- [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] The DDLS is primarily concerned with the education of children with disabilities in Victoria and any improvements in the National School Reform Agreement ("the Agreement") that can translate to improvements in the education of these students, and in their physical and psychological safety while attending school.
- [4] We submit that this cohorts urgently requires any assistance or intervention that can alter the current status quo, such status quo being ably chronicled in the following reports and inquiry findings.
- a) Held Back-the Experiences of Students with Disabilities in Victorian Schools 2012 Victorian Equal Opportunity and Human Rights Commission
www.humanrightscommission.vic.gov.au/our-resources-and-publications/reports/item/184-held-back-the-experiences-of-students-with-disabilities-in-victorian-schools-sep-2012
 - b) Programs for Students with Special Learning Needs Victorian Auditor General 2012
<https://www.audit.vic.gov.au/report/programs-students-special-learning-needs>
 - c) Review of Program for Students with Disabilities 2016
www.education.vic.gov.au/Documents/about/department/PSD-Review-Report.pdf
 - d) Report on Students with Disabilities in Victorian Schools Analysis Paper 2017 Victorian Equal Opportunity and Human Rights Commission
<https://www.humanrightscommission.vic.gov.au/home/our-resources-and-publications/reports/item/1602-held-back-the-experiences-of-students-with-disabilities-in-victorian-schools-analysis-paper>
 - e) Parliamentary Report on Services for People with Autism Spectrum Disorder 2017
<https://www.parliament.vic.gov.au/fcdc/inquiries/article/2588>
 - f) Victorian Ombudsman's Investigation into Victorian Government School Expulsion 2017
<https://www.ombudsman.vic.gov.au/getattachment/57d918ec-fee0-48e0-a55e-87d0262d3c27/publications/parliamentary-reports/investigation-into-vic-gov-school-expulsions.aspx>
 - g) Victorian Equal Opportunity and Human Rights Commission Submission to the Review of the Education and Training Reform Regulations 2017

<https://www.humanrightscommission.vic.gov.au/policy-submissions/item/1546-submission-to-the-education-and-training-reform-regulations-2017>

- h) Improving Educational Outcomes for Children with Disability in Victoria, Castan Centre for Human Rights Law 2018
https://www.monash.edu/_data/assets/file/0016/1412170/Castan-Centre-Improving-Educational-Outcomes-for-Students-with-Disability.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=read_our_landmark_report_into_the_education_of_children_with_disability&utm_term=2018-06-28
- i) School Compliance with Victoria’s Child Safety Standards, Victorian Auditor General’s Office 2019
https://www.audit.vic.gov.au/sites/default/files/2019-06/200619-Child-Safe-Standards_0.pdf

- [5] The right to education is often described as a multiplier human right.¹ If an individual’s right to education is successfully and meaningfully realised it has a beneficial effect on the individual throughout their life. Such an analysis is just as applicable to students with disability as to those without disability. A meaningful education opens up opportunities that would otherwise not exist, potentially reduces future support needs, and aids in long-term inclusion in the community.²
- [6] DDLS provides its recommendations in the context of the evidence garnered in the publications set out in paragraph 4 above, through its involvement on the Board of Disability Advocacy Victoria, its position on the governance group of the Disability Advocacy Resource Unit (“DARU”), and informed by discrimination complaints and enquiries to this office.
- [7] Over the last 20 years, the Victorian Department of Education has been the most common single Respondent complained about in relation to discrimination at our service. DDLS also regards numerous enquiries about treatment that doesn’t meet the rigid criteria for a complaint under discrimination law, but nonetheless constitutes mistreatment, very seriously.
- [8] The evidence is that the current Agreement and Agreements before it, have not achieved any positive outcomes for students with disabilities. We believe that the Commonwealth Department of Education is in a unique position to influence outcomes for students with disabilities in Victoria, where numerous other organisations have been unable to.
- [9] It is unclear to us why a state government department ought to be rewarded by funding from the Commonwealth, for a long history of discrimination against and mistreatment of, students with disabilities.

¹ Meghan Campbell, ‘Equality and the right to education: let’s talk about sex education’ in Sandra Fredman and Meghan Campbell (eds), *Human Rights and Equality in Education: Comparative Perspectives on the Right to Education for Minorities and Disadvantaged Groups* (Policy Press, 2018), 111, 111 (‘Equality and the right to education’).

² National Audit Office and Department for Education, *Oversight of special education for young people aged 16-25* (HC 1585, 4 November 2011), 10-11.

Overarching impediment to change

- [10] Victorian schools are autonomous. Policies, procedures and guidelines are not required to be read and there is no mechanism for them to be read. Assuming staff may read these documents, the language of them is in the main permissive (there are no requirements in the main, simply “soft” recommendations “you can”, “you might”). There is no quality control over the following:
- a. Individual Education Plans;
 - b. Behaviour Plans;
 - c. educational programs provided;
 - d. behaviour approaches;
 - e. education provided.
- [11] Apart from many of the reports mentioned in paragraph 4 making these observations, sometimes repeatedly, DDLS is in the position of receiving school documents where the lack of consistency is plain to see.
- [12] The fact that the education provided is not quality controlled, is perhaps the most serious issue overall. This particularly affects schools that segregate students on the basis of their disabilities (“special” schools). The Federal Senate Education and Employment References Committee sets this out in Chapter 2 “Education Rather Than Babysitting” in their report³.
- [13] We respectfully submit that any future Agreements with Victoria may have little utility when Principals are able to run their schools in the manner of their choosing. Our strong preference would be that funding ought not to be provided to the Victorian Department of Education until some if not all of the extremely serious issues facing students with disabilities are addressed. We respond to some of the questions posed in relation to the next Agreement, with that background in mind and the strong context of findings by numerous eminent organisations.

Question 1. *What are the most important student outcomes for Australian school students that should be measured in the next NSRA? Should these go beyond academic performance (for example, attendance and engagement)?*

- [14] School attendance should be measured and reported upon. Students with disabilities often have their attendance at school restricted, despite this issue being raised over 10 years ago by the Victorian Equal Opportunity and Human Rights Commission (“VEOHRC”)⁴. We infer this is on the basis of inadequate funding to support them. An additional problem is that parents find that the restrictions are not being recorded by schools. Students with disabilities have the right to attend on the same basis as students without disabilities do, which is full-time.
- [15] The academic outcomes of students who attend segregated schools ought to be measured and reported on in addition to the outcomes of students with disabilities who attend mainstream schools.
- [16] Suspensions including “informal” suspensions, (where students’ parents are told to come to school and take them home), and expulsions (exclusions) ought to be measured and reported on by school.

³ Access to Real Learning: the impact of policy, funding and culture on student with disability 2016

⁴ Held Back Report 2012 p93

[17] All data ought to be publicly available.

Question 2. What are the evidence-based practices that teachers, schools, systems and sectors can put in place to improve student outcomes, particularly for those most at risk of falling behind? Are different approaches required for different at-risk cohorts?

[18] We are understanding the term “evidence-based” to refer to approaches or programs that are scientifically sound, having been researched and published in independent peer reviewed journals.

[19] In Victoria, given the independence of individual schools, such schools are able to use any programs they see fit, regardless of whether they are discredited and have no basis in research. Schools should be required to use evidence-based programs, and have funding limited to them if they use programs that are known to be discredited and have no basis in science. We submit that responding to children who can't read, or who have difficulties learning, by subjecting them to programs which are widely known to be discredited, is unethical and immoral.

[20] The most important, (because it is the most basic), subject of evidence-based approaches and programs, is learning to read. Despite decades of research, schools are not required to use Science of Reading approaches or programs. The importance of using evidence-based remedial academic programs, and systematic synthetic phonics approaches to reading cannot be underestimated as it affects students with numerous language and learning disorders. Science of Reading approaches include an acceptance that different approaches to teaching reading are needed to suit “different learning styles” is a fallacy.

[21] The harm that is done to children who are not being taught to read due to schools not being required to apply programs that have any evidence behind them, is incalculable.

Question 3. How can all students at risk of falling behind be identified early on to enable swift learning interventions?

[22] A number of states have a phonics check in place in the first year or two of school. This gives an indication of reading ability. In Victoria, there is no requirement for a teacher to take any specific action, in response to the results of that test.

[23] The presence of any disability that affects cognition is an identifier, but as set out immediately above, there is no requirement on a teacher to do anything specifically in response to having a student with a disability in their class.

[24] It is the parents' responsibility to make a complaint of discrimination if their child is not being provided with the support they need in school. This is, in our view, not acceptable. It is one thing to identify students who are at risk of falling behind, but if there is no requirement to act in a certain way in response, then such identification is redundant. Unless the Agreement requires certain actions, (and this is linked with our recommendations in relation to other areas such as using evidence-based programs), in response to students who are either already failing in the lowest grades, or clearly at risk of failing, then the lack of academic outcomes for students with disabilities will continue.

Question 5. What should the specific targets in the next NSRA be? Should the targets be different for primary and secondary schools? If so, how? What changes are required to current measurement frameworks, and what new measures might be required?

- [25] It has been seven years since the Department of Social Services put out a framework to reduce and eliminate the use of restrictive practices against people with disabilities.⁵ The Disability Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disabilities has also expressed its concern that restraint and seclusion continues in schools.⁶ On the other hand, in schools the restraint and seclusion of students with disabilities continues. We submit that targets should be zero for both restraint and seclusion. If adult services for people with disabilities are striving for the elimination of restrictive practices, there is no reason why children should not have the same protection. This data needs to be collected and needs to be made public.

Question 6. How can the targets in the next NSRA be structured to ensure that evidence-based approaches underpin a nationally coherent reform agenda while allowing jurisdictions and schools the flexibility to respond to individual student circumstances and needs?

- [26] We suggest turning this question around, and asking why the Commonwealth should be funding jurisdictions and schools without expecting outcomes? In relation to students with disabilities, we refer again to the reports in paragraph 4. We submit that jurisdictions and schools should only be allowed to have the “flexibility” to respond to individual student circumstances and needs if they have proven they can confidently do so. To date, the evidence is, for our cohort, they ought not be using their “flexibility”, and need to have funding contingent on improvements and targets that indicate students with disabilities are being protected from harm, and being educated.

Question 8. What does it look like when a school is supporting student mental health and wellbeing effectively? What is needed from schools, systems, government and the community to deliver this?

- [27] We refer to paragraph 25 regarding restraint and seclusion of students with disabilities. Restraint and seclusion can cause injury, trauma and death. Decades of evidence and deaths of students with disabilities around the world are testament to the dangers of its use. Ceasing the use of physical restraint and seclusion will significantly positively impact student mental health and well-being.
- [28] In terms of mental health, well-being, and self-esteem, it is important for all students to feel they are progressing, and are getting an education. Schools using evidence-based programs to respond to struggling students is inextricably linked to mental health outcomes for the students.

⁵ National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector 2014

⁶ Disability Royal Commission Issues Paper Education and Learning p5

Question 10. Should a wellbeing target be included in the next NSRA? Could this use existing data collections, or is additional data required?

Question 11. Would there be benefit in surveying students to help understand student perceptions of safety and belonging at school, subjective state of wellbeing, school climate and classroom disruption? Would there be value in incorporating this into existing National Assessment Program surveys such as NAPLAN?

- [29] Complaints data, particularly legal complaints against schools, is a good indicator of student welfare. Students with disabilities ought to have a say about whether they feel safe and feel a sense of belonging at school. Given the high rates of bullying of students with disabilities, it is likely that many students do not feel it is safe, or that they belong. Telling a student with disability that s/he is not allowed to attend school after lunch on any day, or continuously requiring him or her to go home before any of his/her peers, we submit, does not engender a feeling of safety or belonging.
- [30] Current data on suspension/expulsion/exclusion will also be an indicator for mental health and well-being. The research on the effect these punitive measures has is clear⁷. They exacerbate disengagement and behaviours of concern.
- [31] While incorporating such a question in NAPLAN would be economical, it may be too much to expect students with teachers standing in close proximity to feel confident to answer this question truthfully. Also, many parents of students with disabilities are talked out of allowing their children to undertake the NAPLAN. Another mechanism to obtain this information would be helpful.

Question 12. To what extent do school leaders and teachers have the skills and training to support students struggling with mental health?

- [32] It is unclear what responsibility school leaders and teachers ought to have to support students struggling with mental health other than to identify such struggles, and bring in appropriate professionals.

Question 25. What types of data are of most value to you and how accessible are these for you?

- [33] Data on:
- a. restraint and seclusion;
 - b. academic outcomes for students with disabilities;
 - c. how many students who cannot rely on speech have completed their schooling having gained sufficient vocabulary to enable them through Augmentative and Alternative Communication to independently access the community;
 - d. numbers of students prohibited by schools from attending full time.

⁷ National Education Association [School Suspensions Do More Harm than Good | NEA](#)

The above data is currently not accessible.

Question 26. Is there any data not currently collected and reported on that is vital to understanding education in Australia? Why is this data important?

- [34] Data should be available to parents on:
- a. which programs are used in schools in order that they can avoid schools that use non-evidence-based and discredited programs, and can choose schools that use evidence-based programs;
 - b. restraint and seclusion of students with disabilities in a particular school;
 - c. how many unexplained injuries children present with per annum in a particular school (parent driven);
 - d. how many students with disabilities obtain an educational qualification in a particular school (percentage of attending students with disabilities).

Question one 27. Should data measurement and reporting on outcomes of students with disability be a priority under the next NSRA? If so, how can this data be most efficiently collected?

- [35] Yes. Given the reports set out in paragraph 4, the improvement of the education of students with a disability is urgent. Parents would have to be contacted directly for the collection of some of this data.

This submission is endorsed by Disability Advocacy Victoria.



Peak body for independent disability advocacy in Victoria