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A D V O C A C Y

**Submission to the NSW Department of Education,  
Student and Parent Experience Directorate, in  
response to the Community Engagement and  
Experience Policy (CEEP) Discussion Paper**

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## Introduction

Family Advocacy are not for profit disability advocacy organisation that works across New South Wales (NSW) to advance and protect the rights and interests of people with developmental disability to live a meaningful inclusive life and experience the same opportunities as the majority of Australians. This means being included in education, employment, and community with the right to live safely, with dignity, and free from violence, abuse, neglect or exploitation.

Family Advocacy has a particular expertise in the area of disability and education, and as such we appreciate the opportunity to provide a response to the Community Engagement and Experience Policy (CEEP) Discussion Paper. Our comments and recommendations are premised on three decades of experience working with families experiencing barriers in the education system in New South Wales.

## Defining the Community Engagement and Experience Policy (CEEP)

Broadly speaking, we agree with the proposed objectives of the new policy, the proposed definition of the term “school community” and the benefits as expressed simply in the policy “when schools engage well with parents and carers, students do better”.

What is missing? **Emphasis on Student Voice and participation.** Whilst we acknowledge “students” are included in the term school community, we believe there needs to be a greater emphasis on student voice and participation to meaningfully participate in decision making, ensuring accessible language is used. Where the student is involved in this process, there is a far better chance of working through any issues in an effective way. Often, when the student is bypassed, it has the effect of having foot surgery when heart surgery is required – the support being provided does not match the needs of the student.

**Language needs to address the power imbalance.** Many of the enquiries we hear are from families expressing the very real power imbalance that exists between the whole school system and the student/parent dynamic. Schools can exercise unfettered discretion. This is evidenced by the Department’s own submission with the Disability Royal Commission stating “the suspension rates for vulnerable students in NSW are too high and disproportionately so for students with disability”<sup>1</sup>, strongly pointing to systems failure.

When discussing unacceptable behaviours, there tends to be an emphasis on the student or parent/carer with discussion around the actions or consequences that follow, but this needs

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Public Hearing 7 - Education Questions on notice - State of New South Wales – 16 July 2021

to be balanced out by a recognition of the unacceptable behaviour of teachers/principal/the school system not adequately supporting a student with disability and there must also be accountability.

*Commentary by a parent on the Disability Standards for Education:*

*They are not taken seriously, schools are aware of their obligations but choose to break them by constant gatekeeping on enrolment and curriculum, and bully parents who hold them accountable to these standards. To me it is just paperwork with no power in it because the Standards are being ignored and schools continue to diminish their responsibility to the student and not take the Standards as seriously as they should. Need greater compliance and enforcement.*

One of our families shared that after making a complaint about the school, she was refused access onto the school grounds. Unlike the consequence of a suspension against the student, the parent had no recourse or power in this scenario nor did the student have their issue addressed. For this reason, many of our families do not make a complaint for fear of any backlash on their child.

*Parent of child with disability:*

*I had a significant fallout with the principal which involved more personnel above the chain last year, but I decided not to lodge an official complaint because it was evident that the system was in favour of the Department. We were concerned our daughter might be negatively affected.*

Further, it's not just the student, there is also unacceptable behaviour by school staff and the Department would be aware of the number of complaints about staff members of abuse. Referring to ABS statistics, Dr David Roy reported in The Conversation (on 20 February 2019) that NSW revealed there were [657 complaints about staff members](#) in 2018 alone. Some 438 of these complaints were allegations of sexual or physical abuse against staff

working in public schools.<sup>i</sup> To refer to “unacceptable behaviours” on its own does go far enough. We invite the Department to ensure there is just as much emphasis on school staff with express recognition of “Unacceptable behaviour for all groups in the school community”.

Therefore, we encourage the Department to ensure the language used throughout the policy properly addresses the power imbalance that exists between the school and the student/parent/carer. The policy should not be only about what the school needs but also around what the school needs to do to properly support a student, especially those who are more vulnerable such as a student with disability. The language in the policy needs to expressly acknowledge the nuance that for many students with disability, what is labelled as an unacceptable behaviour or a behaviour of concern may not be understood by the student initially to be so yet with the right supports in place at school and at home, can be worked through and resolved. We are concerned using the term unacceptable behaviour will be interpreted in a blunt way and used as a weapon to demonise the student with disability, upholding the status quo. We say this with deep concern as our enquiries from families in relation to education and suspensions due to lack of reasonable adjustments continues to rise year after year.

*Parent of child with disability:*

*The Principal has never once picked up the phone to talk about some very big problems and he doesn't respond to emails or attend meetings he has been directly requested to attend. The Deputy Principal pulled the old "maybe she should go elsewhere" when supports were requested and sabotaged his own attempts at making accommodations by getting annoyed when they were used.*

In relation to the barriers for collaborative partnerships for parents we hear from, there is either will or the skill that is lacking from the school staff. This prompted us to develop (funded by the NSW Department of Education) [Conversations for Collaboration](#), a collaborative engagement framework co-designed and co-authored by NSW educators and parents of students with disability, who have experienced quality student centred collaborations. The framework aims to assist families, teachers and ultimately students. It will enrich conversations, enable sharing of information and resources, reveal perspectives, and bring about engagement for better outcomes for all. We encourage the Department to

adopt this resource as part of the CEEP as we have received excellent feedback from parents and teachers who have used it.

### School Community Charter

We refer to the above discussion as we express a similar sentiment about the questions regarding the School Community Charter.

We are concerned around the line phrase “Actions schools can take in the event of unacceptable behaviour” as it has punitive rather than preventative implications. We encourage the Department to ensure there is clarity around the legal requirement of the school to provide reasonable adjustments and a supportive environment in order that a student with disability will succeed rather than fail, which unfortunately is not the experience of the parents we hear from.

### Complaints Handling Policy and School Community and Consumer Complaint Procedure

We can confirm the five key themes (below) that have emerged from the feedback are consistent with what we are hearing from families:

1. The need for greater clarity and understanding of the process, timeframes, and possible outcomes when a complaint is raised, including student-friendly factsheets for students, parents, and carers;
2. The need for centralised support from the department when managing complex complaints;
3. Guidance for schools on managing repeated complaints on the same matter;
4. The need for a more streamlined complaints handling process to support schools, including pro forma forms and responses; and
5. The importance of professional learning opportunities for school staff to develop their capability addressing concerns at school

We encourage the Department to also adopt and include the following feedback:

**Independent, effective, accessible, transparent, safe and enforceable complaints mechanisms and legal remedies in cases of a violation of the right to education (as**

required to comply with international conventions, including the Convention on the Rights of Persons with Disability (CRPD)).

*Parent who felt she had no choice but to home school as the school system failed her children:*

*I hope change can happen if the Department are truly serious and actually want to change the way things are done. Firstly, it must start with not having the Department investigate itself when parents make complaints. This is simply not acceptable as you will never get fair or just outcomes to complaints made. There also must be 100% transparency throughout the complaints process, accountability and support for students and their families throughout the complaint process who have suffered trauma and abuse at School.*

Currently, there is a lack of confidence in the fairness and safety of current complaints management processes. Complaints are not managed in a collaborative approach. There is limited support for students and their parent/carers to navigate complaints processes or to facilitate their meaningful participation in complaints processes.

A significant proportion of students and families continue to feel fortunate just to be enrolled in a school and thus are unlikely to complain for fear of retribution or placing their child at further disadvantage. Their confidence, for example, to seek to enforce the school's responsibility to adjust the curriculum, ensure the teacher uses strategies likely to engage the student, provide accessible transport for a school excursion and ensure that the school camp is held in an accessible venue, is balanced against their fear that they will be labelled a "trouble maker" or that their child will be victimised by staff who feel forced to implement a strategy they disagree with, not see as necessary, or perceived as "too much work".

In cases where a parent does complain, our 2020 survey revealed 70% of parents were not satisfied with the current complaints process (27% very dissatisfied and 43% dissatisfied), with only 17% stating they were satisfied. Parents expressed the current complaints mechanism lacks objectivity, accountability, transparency and timeliness. The experiences shared by families tell of a system that investigates itself. The principal backs the teacher, the regional office backs the principal, and so it goes up the bureaucratic line within the Department. A big problem lies in the complaints process not being independent. We hear in

many instances where students are subject to repeat suspensions which, in the absence of an appeals process, are subject to limited oversight, monitoring and review beyond the school.

*Parent:*

*There is no independence to complaint systems. Parents of students with disability and students with disability are very vulnerable to the consequences of lodging complaints. Therefore, they tolerate harassment and victimisation that many others would not. The system is geared to the education staffer being presumed in the right, especially as the process is initially undertaken by the school itself. It could be vastly improved by an independent complaints process.*

This lack of due process must be remedied. To strengthen the complaints practice in schools to provide a positive experience for students and families, we suggest the Complaints Handling Policy and School Community and Consumer Complaint Procedure needs to:

- Ensure the Department of Education has clear policy with independent procedures and processes for responding to allegations of failure to make reasonable adjustments and to appeal suspensions/expulsions to set clear guidelines and expectations for the benefit of external complaints. It is very important to ensure the school community understands how to make complaints of this nature and how the complaints will be investigated. It is critical that families and others also have a chance to feed into this.
- Ensure accessible online content in plain English or Easy Read advice is provided to parents about the right to complain about the lack of reasonable adjustments and how the complaint will be investigated, as well as the right to appeal a suspension/expulsion (and this must be an external process).
- Ensure there is an independent complaints/review process for a school's refusal to make reasonable adjustments, forced partial enrolments, suspensions and expulsions.
- Acknowledge input from all stakeholders such as the principal, teacher, student learning support officer (SLSO), allied health professional, parent, external expertise with evidence-based practices as to what constitutes a reasonable adjustment.
- Create an independent evidence centre for learning (at State or Federal level) to guide schools/parents as to what constitutes a reasonable adjustment.

- Acknowledge that whilst guidance can come from evidence-based examples, students with disabilities are not a homogenous group and so to apply a “one size fits all” approach can be dangerous when it comes to reasonable adjustments. See the individual first not the diagnosis.
- Ensure no Principal investigates a complaint against themselves.
- Maintain the rights to due process.
- Have an independent appeals process for suspensions/expulsions. (In Victoria, they now have an independent body for appeals of expulsions and the number of expulsions has dropped from 285 in 2018 to 185 in 2019). See [article](#). There needs to be an avenue to appeal the decision not just the process and changes should be made to existing policy to include the option to lodge an appeal if it is considered the decision to suspend, exclude or expel a student in itself was inappropriate.

Additionally, while a complaints mechanism is usually the last resort for families, Family Advocacy suggest making further use of the role of the NSW Ombudsman or another type of independent body (that can be real-time responsive) to help track and provide a fuller picture of breaches of the Disability Standards of Education in relation to a lack of reasonable adjustments. This would provide a less formal option for family complaints than the Human Rights Commission. Most parents are currently unaware of the Ombudsman’s role in addressing complaints regarding schools.

In this regard, Family Advocacy recommends:

- further use of the role of the NSW Ombudsman or another independent body to help track and provide a fuller picture of breaches of the Standards in NSW, and that the Ombudsman be resourced to do so
- that the Department of Education improve mechanisms to monitor compliance and that the Australian Human Rights Commission (AHRC) be empowered to intervene in cases of breach.

### **Improve Communication with family members.**

One of the most consistent concerns raised in school education complaints at the Australian Human Rights Commission (AHRC) is alleged communication failure between the education provider and the parent. This, in combination with an alleged failure to properly consult with the parent, is a feature of nearly all education complaints. It is noted that the above may well



reflect the fact that by the time the complaint reaches the AHRC there has frequently already been a significant disintegration of the relationship between the education provider and the family/parent.

We encourage the Department to consider the importance of communication with the student and the parent/carer as expressed below.

*Email received from a parent of a child with disability:*

*"I finally received a call today around my complaint lodged (well after the 20 working days). The call was from the Director and was to say that the complaint was "being looked at and we would be given a response in writing in 2 weeks"*

*In my complaint, and also subsequent, I requested a meeting,*

*When I asked today about the meeting I was told that any meeting could follow **after** they sent their response*

*I am not happy with that - I really think a meeting would help clarify issues as part of the complaint. The issues are complex I would like an opportunity to discuss them before any response*

*However, she stood her ground and said no meeting until after they responded to the complaint (which I guess would then form a review)*

*I checked the policy and I couldn't see any guidance on this*

*I would value your thoughts please – how can I get a meeting to discuss my complaint **before** they respond.*

### **Improve data collection and regular review and monitoring**

We suggest the Department improve its complaints data management systems to have an effective, centralised recording, reporting and analysis of school-based complaints data. Many problems are not being identified and addressed at the school level due to a lack of

data and no oversight to ensure school staff are implementing good practice in response to concerns raised. Alongside this data collection is the need for oversight, a regular review process and monitoring of complaints data to improve the delivery of the service the Department provides.

### **Investigate other jurisdictions**

We strongly encourage the Department to read the [Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools: Final report](#). Whilst we understand South Australia is a significantly smaller jurisdiction, many of the issues faced by students with disability regarding suspensions, exclusions and expulsion are similar to the NSW setting and accordingly, the majority of the recommendations are absolutely relevant for the Department to adopt, particularly Section “11.4 Appeals & Complaints Processes” and Recommendation 9 to 12 (page 358- 361).

### **Conclusion**

We welcome the Community Engagement and Experience Policy in principle and look forward to seeing the final draft. As discussed, the need for an independent complaints process is well overdue. If our recommendations were adopted, we are confident there will be much better outcomes for students with disability as well as school staff. Family Advocacy welcomes the opportunity to answer any questions or discuss any ideas further.

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