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## AT SCHOOL?

EXPLORING SAFETY AND HARM OF  
STUDENTS WITH COGNITIVE DISABILITY  
IN AND AROUND SCHOOL

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## Summary

This project aimed to generate knowledge to improve the access of students with cognitive disability to protection in the event of maltreatment, and to strengthen the implementation of their legal and human rights in school settings. To do this, we identified the range of protections currently available at law to these young people, conducted research to identify areas where they are not receiving due access to justice, and analysed this combined material to identify opportunities for improving law, policy and practice.

## BACKGROUND

The abuse and neglect of children and young people with disability is a longstanding and pervasive social problem. This harm in children and young people's lives ranges from chronic low level harassment and lack of appropriate care to extreme situations of criminal assault (Caldas & Bensy, 2014; Holzbauer, 2008; Reiter, Bryen, & Shachar, 2007). It is underpinned by social and systemic practices and attitudes which set low expectations for children and young people with disability and which frequently leave them on the margins in both practice and policy (Higgins & Swain, 2010; Stalker & McArthur, 2012). The most reliable research evidence suggests that children and young people with disability experience higher incidences of interpersonal harm at school compared to their peers, and across multiple life domains are abused at approximately **three times the rate** of children without disability. (Caldas & Bensy, 2014; Jones et al., 2012; Reiter et al., 2007; Stalker & McArthur, 2012; Sullivan & Knutson, 2000).

Previous research shows that school students with disability experience high rates of bias-based bullying, often compounded by social isolation. Chronic teasing and harassment impacts upon students' confidence, mental health and sense of belonging at school, reinforcing their loneliness and leaving them in an increasingly vulnerable social and emotional position. In addition to harm resulting from bullying, students with cognitive disability experience other interpersonal harms at school, both intentional and unintentional. For example, children and young people with disability appear to be a greater risk of sexual abuse, whether by other students or teachers/care staff (Caldas & Bensy, 2014; Kvam, 2003). Other harms are perhaps less intentional, resulting from systemic school systems and administrative needs. For instance, students describe having their means of communication, movement and relationships with peers constrained by the preferences and administrative needs of staff (Hoskin, 2010; MacArthur, 2012; Salmon, 2013).

Despite this picture, little is known about the perspectives of students with cognitive disability and their families about safety and harm in and around school. This missing perspective is critical in developing responses which better understand the problem, can respond in ways that meet young people's needs, and which build on existing and developing legal and policy frameworks and good practice.



## THE RESEARCH

To develop a clearer understanding of safety and harm from the perspective of students with cognitive disability and those who support them, we explored four core questions with students, families, educators and child protection, family and disability support workers:

**What characterizes the experience of harm of children and young people with cognitive disability in and around school?**

**What are the barriers to keeping students safe?**

**What promotes personal safety for children and young people with cognitive disability?**

**How can their legal and human rights be upheld?**

The experiences of twenty seven students across both primary and high school are contained in this report. Some are related directly by students themselves, some by families (in the case of students with high support needs or those traumatized by their experiences), and some by young adults with cognitive disability reflecting on their recent schooling. Fourteen key stakeholders from education, child protection and family and disability support sectors contributed through individual interviews.

### Legal and policy frameworks

An extensive review of law and policy was conducted to develop a map of the legal and policy frameworks in place to protect students with cognitive disability who experience abuse, neglect or purposeful harm from others in and around school.

A framework of legal protections exist to uphold the rights of students with cognitive disability. These are embedded in human rights; anti-discrimination law (including the Disability Standards for Education); criminal law; civil and personal injury law; and child protection law. While protections exist, lack of recognition of harm as criminal or civil wrong, little support to take action, and structural and systemic barriers resulted in few cases of legal action for abuses experienced in school contexts. In this research, no students and their families had experience of using criminal law to get redress for assaults, harassment, bullying or intimidation. Two families had attempted to involve police at the time of their son or daughter's abuse, but no charges were laid due to a lack of capacity of the student to give evidence in one case and a claim that either schools or police dealt with assault, but not both, in another.

There are a wide range of policies, at both national and state levels, relating to safety at school, including those focused on inclusion, reducing bullying and harassment, improving wellbeing and targeting problem behaviour. A broad number of policies were located which include students with disability tangentially in their aspirations, but less detailed support for schools, parents and students could be found in public documents at a state, regional and school level. As a group who comprise a significant percentage of the school community, there is less recognition of their particular needs and aspirations than might be expected in the otherwise comprehensive approach to school safety in key policy and practice initiatives such as the national Safe Schools Hub.



## RESULTS OF THE RESEARCH

### The experience of harm in and around school

Children and young people and their families discussed a wide range of harms that they had personally experienced in and around school, ranging from cruel teasing to sexual assault. While there is considerable cross-over between the groups, some distinct differences also emerged in the emphases of each group.

Students and ex-students talked predominantly about the ongoing (sometimes daily) interpersonal abuses they face or faced, and how these impacted on their confidence, happiness and wellbeing. Families raised more 'critical incident' types of injury and assault, and talked about distress and discord that these harms caused to both their children and the wider family, and about the difficulties they had in trying to resolve both the causes and the effects of the harm.

Key stakeholders – educators and administrators in schools, child protection workers, therapists and disability support workers – spoke more systemically about the impact of low expectations, discrimination and lack of access to needed support. Many of them saw the abuses experienced by students with cognitive disability arising in response to these core causative features.

### Barriers to keeping students safe

When asked 'what makes it hard to stay safe?', children and young people talked about several key barriers to personal safety, particularly centred on how chronic harm was in their lives, feeling unheard and isolated, and feeling either that help was not provided when they asked, or unable to ask for help. Young adults in particular talked about the negative impact on their lives over time.

The interviews conducted with family members revealed complementary concerns to those of children and young people. Parents and grandparents were primarily struggling with communication, attitudes of school personnel, and a lack of adequate concern for the harm experienced by their child.

Consistent themes emerged from interviews with key stakeholders about the increasing complexity of the environment in which they were working, and how few resources (financial, collaborative and cultural) they felt able to draw on to best support students with cognitive disability, particularly in mainstream schools. Participants stressed difficulties in both accessing information and in sharing information with colleagues who may be unwilling to take up inclusive practice; and how difficult it can be to support individual children when systemic structures do not support the actions needed.

### Factors that promote personal safety for students

Students were very consistent in talking about the things that helped when they experienced harm. Having someone who knows and values you, being acknowledged, listened to, and having concerns taken seriously was of great significance to young people. These connections gave them somewhere to turn if things were not going well, and increased the likelihood that they would be believed and that action would be taken. A considerable number of children and young people in this study did not feel that they had someone in their school who filled this role.

When students experienced abuse, they said the most helpful thing was being believed and having action taken to resolve the situation. Children and young people also said that having strategies to deal with abuse helped them. Some of their strategies were felt to be effective in preventing abuse from occurring, while others were coping strategies for getting through a situation that they felt unable to significantly change. Several young people were concerned about the root causes of interpersonal harm and violence, and felt that action was needed to get to the bottom of problems for both victims and instigators of bullying and assault.

Families felt that proactive support which pre-empted unsafe situations was critical in preventing harm from occurring, and promoting a safe culture and environment for their child. The importance of teachers maintaining and expressing positive attitudes about their children was made clear in building their



confidence, resilience and capacity to report negative experiences or harm, which was felt to help avoid harassment growing into a bigger problem. Responsiveness and openness when problems arose was highly valued by families in building their confidence in supporting their children in addressing concerns about safety.

Similar to families, stakeholders working in or with schools viewed protection as connected to relationships, talking about the importance of building rapport, communication, and having trustworthy adults that children feel they can rely on. The creation of a safe school culture was viewed as critical by most key stakeholders interviewed. Whole of school positive behaviour support, engagement from the principal through all levels of the school in inclusion building activities, and the promotion of a culture in which diversity was acknowledged and respected were viewed by interviewees as core components of positive school cultures which were safety promoting. Where there is a lack of commitment to a child-centred approach, several stakeholders were of the view that students with cognitive disability felt the impact disproportionately. Meaningfully putting policy into practice, developing ways to promote the capability of students with cognitive disability, and working collaboratively with families were identified as key ways to promote students' safety.

### **How students' legal and human rights can be upheld**

When asked what would have made things better, students felt that responding more quickly and vigorously, working harder to address the causes of bullying and interpersonal harm, and trying new and different strategies would help. Young people had several ideas about how interpersonal harm could be prevented at school, focused on education, increased monitoring and early intervention to prevent student to student harm.

When asked what would help improve the current systems, families focused on increasing the level of priority given to responses by school personnel to reports of harm or complaints, attention to prevention, education, and advocacy.

While stakeholders had awareness of policies, a number identified a gap in bringing policies together into a coherent whole. They saw a need for more support and guidance for teachers in mainstream classrooms to increase their capacity to support a diverse student group. They also perceived a need for more support and guidance for students with cognitive disability in the playground to build social skills through play, and for all students to develop the empathy and community focus of the wider school community, and enforce the school's expectations about the parameters of behaviour in and around the school with all students. Access to therapeutic support for students who had experienced harm was raised as important, particularly those recovering from complex trauma. Support and training for bus drivers and bus companies was seen as needed to provide skills to bus drivers in supporting students with additional needs, and encouragement for bus companies to enforce codes of conduct.





## IMPLICATIONS AND RECOMMENDATIONS FOR POLICY

Children and young people and their families told us about many different forms of harm and the ways in which this abuse impaired their school lives. Being harassed and bullied, physically assaulted, threatened and humiliated were ongoing and chronic forms of harm for some children and young who participated in this research. Resolving these situations was frequently difficult, and both students and their families talked about many instances where schools were unresponsive to their requests for help, complaints and repeated attempts to resolve interpersonal harm.

In some cases, young people and families felt that schools responded well when they experienced harm. On these occasions, teachers were proactive, they believed students, listened and took action to sort things out quickly. Families were treated seriously and courteously, and kept informed about progress. School leaders showed strong personal commitment to the safety of students and to resolving breaches of all students' rights to safety and to dealing with harassment, bullying, abuse and violence. This gave children and young people confidence that they could continue at school, that they could deal with future problems, and that their problems were seen as significant and important.

For educators, significant personal commitment to student's rights was expressed alongside significant tensions in managing increasing complexity in students, increasing expectations in teaching in mainstream classrooms, along with decreasing support resources. External stakeholders saw this tension in the lack of support provided to students for needed supports, and the consequent harms that evolved as their behaviour escalated through frustration. When leadership in schools was not felt to be strong, or disinterested in the rights of students with cognitive disability, their experience of harm was seen to be greater and the resolution of those harms seen to be poorer.

When analyzing the lived experience of the twenty seven young people and their families who contributed to this research, a discord emerges between their experiences of harm, the responses provided by education providers, and the systemic structures they found available to support resolution of their abuse. It is clear in this research that the rights of students with cognitive disability to be safe at school were in many cases not upheld, or not upheld without vigorous advocacy.

All of these perspectives and experiences were expressed within a particular legal and policy framework. The framework of laws and policies in this context provide access to a range of remedies for students whose rights are breached, across discrimination, criminal and civil law, and in education, disability and child protection policy domains. However, much of this remained unknown to the majority of participants in this research.

The primary law reform finding of this project is not a need for new laws or policy, but better linkages between the existing frameworks. Better connecting education, disability and child protection at legal and policy points will improve rights information and access for students with cognitive disability who experience harm in and around school.

### **Better understanding of harm**

Multiple perspectives of the experience of harm and abuse emerged in this study. There are significant gaps between the experiences of participants and current legal and policy frameworks. The views of students and families about the level and intensity of harm, the degree of concern shown by schools, and the success of strategies offered in response to complaints about abuse were, as expected, less positive than the views of key stakeholders about how well they were doing in supporting students to prevent and resolve situations of harm. There is little reflection in policy material of the well-established evidence that children and young people with disability are at significantly increased risk of abuse. None of the groups were aware to a significant degree of the legal and policy preventions and remedies available.



### **Addressing the barriers to keeping students safe**

A series of barriers with systemic implications were identified in the research. Incidents of harm were often treated in isolation, rather than viewed as a pattern of behaviour. A focus on the diagnostic label of the student with disability, their behaviour or their 'vulnerability' at times prevented attention to the instigators of harm or abuse. There was little focus on looking to the cause of harassment, bullying and interpersonal harm to resolve it more completely for students. The opportunity to respond early and prevent harm escalating into more serious abuse was missed by education systems on multiple occasions. Appropriate policy and legislative frameworks were not applied in the early stages of abuse. Finally, there was a lack of shared learning from the experiences of students and their families, so that the same mistakes were repeated. These results are consistent with the findings of other large scale inquiries into abuse and disability hate crime (Smith, forthcoming).

In this research, little evidence was found of students and families accessing policy and legal support for prevention, early intervention, remedy or redress of harms. Their knowledge of the law and of legal and human rights around education appeared limited in many instances. Many were unclear about their rights in relation to complaint making, and found the process draining and difficult. In the eyes of families, success or otherwise of strategies to keep students safe were dependent more on relationships with key staff than on the enactment of policy. From the perspective of educators, a number of issues impacted on their capacity to implement policy, including training, the time to implement strategies and plans for students with complex support needs, and the willingness of all staff to involve students with disability in mainstream classes.

### **Promoting personal safety for students with cognitive disability**

The relationships between a number of interviewees and schools had been compromised by the protracted difficulties in resolving students' problems with safety. Safeguards against this are needed, such as the creation of whole school cultures in which abuse and harm is not tolerated, robust complaints frameworks with openness to feedback, and strong advocacy support for both students and families.

### **Upholding the legal and human rights of students with cognitive disability**

The importance of connecting the protection frameworks for children, people with disability and students cannot be overstated. This is particularly significant for children and young people with high and complex needs, who often engage with multiple service systems and providers. Not one student in this research had made use of criminal, civil or anti-discrimination law in relation to the harm they had experienced, although there were multiple instances in which they may have had reason to do so. National commitments to United Nations Conventions - to the rights of children to be protected, the rights of all people not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the rights of people with disability to be free from exploitation, violence and abuse and the right to safe inclusive education - need to be woven into policy and practice at state and local levels.

At a policy level, in this research the extensive amounts of guidance material available online was not (or not yet) being demonstrably translated into practice frameworks. The policy and practice material available through sites such as the Safe Schools Hub and Bullying No Way provides excellent input into taking a whole school approach to safety, developing resilience in students, creative and innovative ways to tackle bullying and harassment, and building partnerships with families, reflecting key policy documents such as the NSW Disability Action Plan and Every Student Every School. However, it was difficult to locate information in the level of detail needed to make a complaint or find out Department policy on abuse and neglect. For students with high and complex needs, there was little detailed information which would support practice change.

At a practice level, the experiences of many students and their families in this research did not reflect demonstrable uptake of this material. The tension between increasing workload, increasing complexity in students and available time which was mentioned by almost all educators may impact on the take up of these resources. The majority of key stakeholders did not discuss these key frameworks, relying instead on locally developed policy and practice responses to both complaints of abuse and harm, and to promoting safety at a whole school level.



