

**INQUIRY INTO STUDENTS WITH A DISABILITY OR
SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS**

Name: Mr Martin McNally (PC)

Date received: 19 June 2017

Partially
Confidential

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Isn't it time we took more of an intelligent approach to disability or special needs in New South Wales schools? Many would blame the lack of adherence to the Disability Standards in Education. Just look at the terminology used in the Standards and it's numerous misinterpretations.

Eliminating discrimination on the ground of disability as so far as it is "*possible*"; ensuring, as far as it is "*practicable*" that persons who have disabilities have the same rights as other community members; and in particular, maintaining a "us" versus "them" mentality through constant reference to the rights of persons with disabilities compared with the "rest of the community".

My son has become the perfect example of this "us" versus "them" and as a litmus test, we can categorically say, "Yes that test turned **RED**". He became the victim of the "policies" manipulated to subtly remove our children from "their" schooling system at a pivotal moment of their life, transitioning to High School. My son had no protection against the attacks and his human rights were eroded into the ground, rights that can by the mere whim of an executive in the catholic and public educational systems lead to exclusion and non-compliance with the intrinsic obligations under federal legislation or disability standards.

In December 2014, [redacted] was notified that he would not be enrolled at his designated catholic high school, [redacted] This was a shock as in all our collaborative discussions with the Catholic Education Office and the Principal of the school, [redacted] it was made clear that [redacted] was very welcome to enrol and attend the high school [redacted] enrolment application was submitted in January, 2014 to the Principal, [redacted] but was rejected by the Catholic Education Office in December 2014. The reason provided by [redacted] was that he "*wanted to accept but the CEO would not provide the funding for his reasonable adjustments*". We were also told by the CEO that they "*did not receive enough money from the Government to continue to fund [redacted] reasonable adjustments*". When we were notified in December 2014, we had not applied to any public high schools.

It is important to understand the preceding events that occurred in [redacted] primary school. It is also important to note that [redacted] was never a significant behaviour risk prior to these preceding events.

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We had raised previous concerns relating to the professional behaviour of the Principal to the Catholic Education Office. This included specific concerns relating to management of three serious incidents such as an act of violence against in December 2016, the non-reporting by the Principal to the NSW Police of a mandatory reporting incident and then this action by the Principal to intimidate our son while he was in his classroom. The latter resulted in new symptoms such as running away from teachers and situations of stress.

These behaviours by the Principal seemed to target not only but certain students' with disabling or deemed "special" conditions. It was evident that challenging systemic and individual wrongdoing would result in any vulnerable child's dismissal from the system and any continuing responsibility the CEO might have for that child was not a unique child or case in point. There are at least eight groups of parents with children that had a disability or additional learning needs that were asked not to enrol their children at the catholic high school in 2014 providing sufficient evidence that this is a strategy employed by the leadership of the CEO.

was out of the catholic educational system, not because of any suspension/exclusion but because the CEO wanted to hold endless amounts of meetings, each time adding on more and more frivolous allegations and purposefully pushing and ourselves to leave the system "voluntarily". It is important to note that despite developmental delay and OCD he had never been suspended nor excluded from since he commenced in Kindergarten. His behaviours were always very normal.

On the 19th May 2014, Regional Director, Catholic Education Office wrote (see attached letter) *"You have raised a number of important issues in respect of the CEO services for students with disabilities. The CEO has numerous students with varying disabilities successfully engaged in our schools. **It is accurate however, that at this stage, we do not offer the level of specialised disabilities services in education equivalent to that available in Government education settings.** The CEO's Leadership Team has been engaged in discussions to review the provision of opportunities for students with diverse disabilities in the future. However, **at this point it is correct say that some students who require certain specialised assistance and care are better met by government and other specialised services.***

He also confirmed that *"**It is also my position that once is more stable the CEO will be pleased to consider his return to one of our schools.**"*

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A) Equitable access to resources for students with a disability or special needs in regional and metropolitan areas.

There is no equitable access to resources for students with a disability or special needs within the Sydney Catholic Schooling system and the DET public educational system. The persistent attempt to explain their reasons for excluding the enrolment of [redacted] and other children with disabling conditions (including behaviour directly associated with their conditions) using the “unjustifiable hardship” exception from Disability Standards for Education relies on two key problems.

Firstly, when [redacted] applied to be enrolled at his local designated Catholic High School, [redacted] in Year 7 and again in Year 9, the reason why he was to be refused provided by the Sydney Catholic Schools Regional Director, [redacted] Sydney Catholic Schools was that *“the Catholic Educational System does not receive, relative to its size, the same level of funding as the public educational system”*.

We challenged this reasoning and wrote to the Federal Education Minister querying the validity of this. The Federal Minister, through the Department of Education, wrote back the following:

“The Australian Government provides substantial funding for government and non-government schools under the Australian Education Act 2013. This funding is determined on the same basis through a base per-student amount, plus extra funding to target disadvantage such as for students with disability...”

“Recurrent funding received by Catholic Approved System Authorities under the Australian Education Act 2013 is to be used flexibly for schools to meet the educational needs of all students, including students with disability. Catholic Approved System Authorities, including the Catholic Education Office Sydney, are not limited to the notional students with disability loading amounts for their expenditure on those students, nor are they required to spend the total notional loading amount on students with disability”. (See attached letter)

In a very articulate way and in full compliance of the UN Convention and the Disability Standards for Education, the Minister Birmingham and his colleagues mandate the use of the Federal funding framework that meets the individual needs of children and their disabilities. Schools are not to receive bulk funding but allocated appropriate funding subject to an accurate assessment of the individual needs and reasonable adjustments required.

This leads on to the second issue. How children with disability are assessed by educational authorities in terms of risk, their entitlement to reasonable adjustments and access to funding. Children with disability are disadvantaged by the intrinsic lack of capability and cultural incompetence of resources that deem these children stereotypically as a waste of resource effort as they are unlikely ever contribute to the community in a beneficial way. This negative bias pervades like a bad smell through the halls of the Sydney Catholic Schooling system and DET. Members of the DET and Sydney Catholic Schools who have the capability as well as members of the catholic clergy have admitted that this has been the challenge in meeting the needs of children with disability. We

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believe society must embrace these kids. They all have value and want to be proud members of society. It is not their fault that they have these disabling conditions.

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B) The impact of the Government's 'Every Student Every School' policy on the provision of education to students with a disability or special needs in New South Wales public schools.

Mr Brian Smyth King is the Executive Director of Disability in the DET NSW. Mr Smyth King is directly responsible for the implementation of the 'Every Student Every School' program ensuring it is compliant with the Federal Disability Standards for Education 2005, and consequently the UN Convention. He was tasked within the Disability Action Plan (DAP) 2011-2015 to *"Develop guidelines relating to the use of the suspension policy in relation to school students with a disability"*. This included adjusting the code of conduct in schools' for children with behaviours associated with their disabling conditions. What he has told us is that this was of course achieved by simply placing in the policy the following *"When dealing with a student with a disability consideration must be given to the requirements of the Commonwealth Disability Discrimination Act 1992, the Disability Standards for Education 2005 and the NSW Anti-Discrimination Act 1977. These require, among other things, that reasonable adjustments are provided to support students with a disability to access and participate in education on the same basis as other students"*. The *"How to implement"* has never been communicated properly to Principals' and wasted resource cost misdirected because of mainly historical cultural and stereotypical views of behaviour disability with little hard or soft educational benefits realised either from a financial, efficiency or economical perspective. We communicated this to Mr Brian Smyth King with 100% support from the former Minister for Education, Mr Adrian Piccoli.

Based on the evidence and the fact that [redacted] has been suspended approximately 40 times since the commencement of Year 7 (**note [redacted] never received a suspension from K to Year 6 or was reprimanded or punished for his behaviour), children with behaviour associated with their conditions are not been adequately assessed risk-wise. The Risk Management Framework in NSW schools does not exist and our experience through NSW schools and the NSW Regional Office is that the planning and support documents, templates, process and procedures discriminate against the child's condition by not reasonably considering positive behavioural strategies in lieu of the Suspension Policy. Evidence of this is evident in the communication we received from

"The first concerns the degree to which a disability is considered as manifest in a behaviour incident within the school. In the USA this is called the manifestation determination and it is use to see if a serious behaviour incident can be directly related to the identified special needs of the students. If so, then the student cannot be suspended or overly punished as it is evidence of a breakdown in the management plan and indicates a review of that plan is needed - not disciplinary actions".

"The second is the intervention is often based on available resources in terms of both staff and funding. If the planning of accommodations and the differentiation of learning programs is to be serious considered then these need to drawn up using a consultative process that used current data on the students pattern of behaviour and learning. From this information a program of intervention that provides the student with the least restrictive interventions to ensure an appropriate and equivalent access to education needs to be drawn up. Once the intervention plan has been agreed upon the necessary funding needs to be provided to ensure it can be instigated. Any modification of

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the plan can only be reflective on performance and not based predominantly on the level of funding available".

Received from

We wrote to the NSW Ombudsman ("Finalise Martin McNally Department of Education - Electronic 2016-08-28" attached. Our response was set out below:

*Let me be very clear. It is **16 years** since Daniel Hoggan went to the Australian Human Rights Commission (Matter 98/127) and the conclusion was that the DET discriminated against him because they had not considered behaviour associated with his disability. The Purvis Case went through the courts in 2003. The Disability Standards that came out of the Purvis case was in 2005 and Brian Smyth King had a specific action on the DET 2011-2015 to adjust the code of conduct in schools. He did not do it and now according to the attached he'll push it forward another couple of years on the new draft DAP. I can appreciate that I do not know your background but let be perfectly clear about mine. I have a beautiful child who is sick because he is suspended constantly and will not receive a high school education in Australia. Your "investigation" would indicate to me that you like the DET executive have no consideration for my son's rights. has a right to due process, he has a right to have risk mitigation/reasonable adjustments for behaviour directly associated with his condition. Please don't think your position entitles you to write or let me say copy whatever you want. I expect a degree of professionalism and if you can't give that, then please do not waste any more of your time investigating this matter.*

<https://www.humanrights.gov.au/alex-purvis-behalf-daniel-hoggan-v-state-new-south-wales-department-education>

Sent to , NSW Ombudsman 30/08/2016

Suspension is a **PUNISHMENT**. It is definitely not an opportunity as Mr Smyth King would try to guide the Principals' to say in support of their decision to suspend.

When we turned to the DET public educational system as an interim solution at the start of Year 7, the Principal of told us in a meeting that "I don't want your son in my school as I do not have a learning support framework that will support him". A learning support framework that according to the 'Every Student Every School' program is alive and well. Where is it? Not at and as we found out, capability to manage children with disability's individual needs was only in some of the school's in our region. These were school's with notorious issues, such as very low academic records, bad reputations as schools' and support staff that were completely disinterested or demotivated. Essentially if we look at these points above we see at least two of the largest educational systems in our fine State that cannot support student's with disability in an inclusive and holistic manner and it is a disgrace.

The 'Every Student, Every School' program is not for every student. That's the guts of it. Mr Smyth King runs a department that sits outside the organisational structure of the DET and feedback from many organisations and people we have me has not left us with the view that Mr Smyth King can fix

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this. Rather than tarnish the man's reputation, it's important to have the right person with the right motives in the job.

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C) Developments since the 2010 inquiry by General Purpose Standing Committee No. 2 into the provision of education to students with a disability or special needs and the implementation of its recommendations.

The NSW Government, as does the Federal Government, has the right motivations. They have always shown a strong commitment to both funding and implementing the appropriate programs. However, the issue is that the educational providers have not shown that commitment.

“Education plays a central role in supporting all children and young people, including those who have a disability or additional learning needs, to achieve successful long term social and economic outcomes and maximise their potential as valued, contributing citizens of NSW”.

On numerous occasions, Adrian Piccoli attempted to influence the Catholic Education Office to comply with the Disability Standards and the core commitment above. However he had to admit to me that he had no influence over the private system. It's truly unjust when a Minister is left disempowered by the system in place, never mind a child with disability or additional learning needs.

Legislation needs to be introduced at both a federal and state level that provides clarity to the Disability Standards and has the power to enforce them without the need to attend a Federal Court. We need a clear interpretation of the Standards and adherence to its requirements. By no means are education providers encouraged to enhance inclusion of persons with disabilities after these Standards, nor are they expected to uphold any notion of equality, and by this I mean respect for all diversities as a fundamental human right.

Instilled in Article 28 of the Convention on the Rights of the Child states *“All children have a right to an education...Discipline in school's should reflect children's dignity...The Convention places a high value on education*

With legal and learned colleagues - like the Attorney General who green lighted the Disability Standards in Education along with its callous use of the English language back in 2005, who needs enemies to promote educational exclusion?

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D) Complaint and review mechanisms within the school systems in New South Wales for parents and carers.

As parents and advocates, we can now conclude that the complaint and review mechanisms are not genuine. They are used to further the interests of the educational providers and thoroughly exhaust and discriminate against the parents/guardians and children complaining. We spent five months meeting and exhausting the Catholic Education Office (CEO) process. They never had any interest in keeping in "their" system. Conciliation in the Australian Human Rights Commission in May 2014 resulted in the CEO reneging on an agreement made there one week later.

Complaint and review mechanisms are generally designed to protect the existing systems in place with all their deficiencies. They traumatise not only the children mentally and emotionally but the parent, advocates and individuals who want to see an inclusive and responsive educational system in NSW.

In general, the responses we have received from DET Regional Director relating to our complaints on the 40 or more suspensions our son has received while at a portray a Director that wants to see only the good never the bad. While we applaud the sentiment, the bad includes

1. No learning support framework,
2. No proper assessment of risk,
3. No capability amongst the staff to support
4. Always additional allegations (most of them false, ridiculous or vexatious) that were never previously communicated

We attach an example of a letter we send and a response we receive. We will let you make your own conclusions.

The NSW Ombudsman response was also disappointing. They didn't provide for a proper investigation and were in a hurry to close the matter. (See attached)

Change is happening but all too slow. The NSW Government has received an enormous amount and range of complaints that clearly indicate the systemic problem that is our educational systems. It is time that the executives in these systems are held to account and key performance is tracked

Remember, we don't like complaining. We would rather the systems were organically improving of their own accord without our constant intervention.

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E) Any other related matters