

Submission
No 42

**INQUIRY INTO CHILDREN AND YOUNG PEOPLE WITH
DISABILITY IN NEW SOUTH WALES EDUCATIONAL
SETTINGS**

Organisation: Disability Advocacy NSW

Date Received: 29 February 2024



Submission to the NSW Legislative Council

Inquiry into children and young people in NSW
education systems

About Disability Advocacy NSW (DA)

DA has over 35 years of experience providing individual advocacy to people with disability. The organisation services over two thirds of NSW, making it the largest individual disability advocacy organisation within NSW.

As part of our work, we provide individual advocacy to students with disability and their families, experiencing unfair treatment in the education system. With local disability advocates – on the ground - in Western Sydney, Armidale, Bathurst, Broken Hill, Ballina, the Blue Mountains, Coffs Harbour, Dubbo, Newcastle, Central Coast, Port Macquarie, Tamworth, Gosford, and Taree – DA has firsthand insights and observations of the lived experiences of students with disability and their families living in these areas.

DA's systemic advocacy draws on coalface information from clients, disability advocates, and the disability sector more broadly to identify and address emerging policy issues. In this submission, we focus on measures needed to implement the Disability Royal Commission's (DRC) recommendations regarding inclusive education.

In addition to this submission, we invite members of the committee to conduct site visits to our regional, rural, and remote (RRR) offices alongside our policy lead (contact details below) to hear more about the experiences of students and families navigating the education system.

Contact

Dr Cherry Bayliss

Policy and Communications Lead

Introduction

DA welcomes the opportunity to make this submission regarding the levels of access and attainment of children and young people with disability in NSW education settings. In our current education system, we see many students with disability at risk of discrimination and unfair exclusion. The current measures do not afford sufficient protection, and many schools are under-resourced to provide reasonable adjustments and support to students with disability. In this regard, this inquiry is timely, particularly with the release of the DRC's recommendations regarding inclusive education.

While it is promising that the DRC recommended inclusive education, the views among commissioners on what this entails differed. Some recommended ending specialised schooling and others proposed an alternative approach. We agree with the latter - with the potential that overtime specialised schooling may one day no longer be needed. However, we hold concerns that specifying time frames, without adequate resourcing may lead to hastily implemented policies that result in poor outcomes.

In our recent report, ['Falling Behind: A Need For Inclusive Education'](#), written in collaboration with Family Advocacy (FA), we highlight the importance of, and discuss measures to move toward, inclusive education. We summarise points previously made in this report to address the term of reference:

(p) Measures to implement the DRC's recommendations regarding inclusive education.

It should be noted that while DA and FA worked collaboratively on this paper, we also held opposing views regarding the phasing out of special and segregated schools. Undoubtedly, this is a controversial topic with many individuals and organisations holding differing viewpoints. For this reason, we trust that the NSW Government will engage in robust consultation and co-design processes to develop education policies for students with disability. It is clear that within the community and sector there is a common goal for inclusivity, but what this looks like must be informed first and foremost by people with disability, the people that care for, and about people with disability and education staff – these are the people whom such policies will impact on this most.

Inclusive education: A unifying principle that enables choice

Students with disability can face significant challenges in education settings. They can experience discrimination and miss out on having reasonable adjustments made for them¹. This can lead to the exclusion of students with disability in classroom settings, where students with disability often experience punitive disciplinary action (e.g., expulsions and suspensions) rather than support. When this occurs, they are set up to fall behind, leading to potential lifelong impacts on education, employment opportunities and social participation.

Our son got seven suspensions over a course of 18 months. Everyone knew that he needed more support, and yet, suspensions were reached so readily as an option to exclude him from a schooling environment. And each time he got suspended, we saw the impact that it had on him and how it set us all backward.

Anonymous parent in 'Falling Behind' – DA's report on barriers to inclusive education

The current education system has a severe teaching shortage, and many mainstream schools are struggling with their current resources to provide reasonable adjustments for students with disability. This is particularly problematic for many mainstream RRR schools who face challenges with attracting and retaining skilled teaching staff. Additionally, we see that students with disability are unjustly over-represented in the some of the most stringent disciplinary actions. They experience disproportionately high rates of expulsions and suspensions in NSW public schools², and they are more likely to have restrictive practices and seclusion imposed upon them³. In many of these instances, reasonable adjustments have not been adequately provided for students with disability. Rather, there is a tendency among some

¹ Baylous, C., [Falling behind: A need for inclusive education.](#), Disability Advocacy 'Aussie Battler' Report Series, 2022.

² [NSW Department of Education Suspensions and Expulsions 2017 - 2021](#)

³ Poed, S., Coogon, K., & Jackson, R. (2022). Gatekeeping and restrictive practices by Australian mainstream schools: Results of a national survey. *International Journal of Inclusive Education*. 26:776 – 779.

schools to adopt exclusionary practices (e.g., segregation, part-time attendance, suspensions, expulsions and so on) to manage challenging behaviour.

Schools can struggle to provide adjustments due to issues such as under-resourcing and lack of skills and knowledge to support students with disability. This can vary from school to school, making it a 'luck of the draw' scenario for students with disability to receive adjustments in mainstream schools. Such discrepancies among schools reflect inconsistencies within the NSW education system and a need for greater regulation. In this, teaching staff have reported to DA some of the challenges they face with wanting to provide inclusive education for students with disability⁴, but are challenged to do so due to time pressures, and lack of resources:

Even though we want to be empathetic and we want to understand and make adjustments, people feel pressures of whether it's the system and the way they think it's supposed to be or what they think they have to achieve and in a schooling system, in a data driven world... we have time constraints, we're time poor, and we have all of these things that we have to achieve and we have to do them.

Anonymous deputy principal in 'Falling Behind' – DA's report on barriers to inclusive education.

Indeed, public schools often carry a 'heavy burden'⁵ responsible for educating a disproportionately high number of students from low socio-economic backgrounds, students with disabilities, students from rural-remote areas and First Nations students⁶. Working under these conditions without adequate support and resources can lead to significant stress for teaching staff. It is unsurprising then that we are seeing what has been described as an '[unprecedented teacher shortage](#)'. Under these conditions, providing inclusive for students with disability is challenging.

⁴ *ibid*

⁵ Kenway, J. (2013). Challenging inequality in Australian schools: Gonski and beyond. *Discourse: Studies in the Cultural Politics of Education*, 2013. 34: p. 286 - 308.

⁶ Gonsk , D. (2012). *Review of funding for schooling*. Department of Education, Employment and Workplace Relations (Australia).

Conversely, there are also some schools that refuse to provide adjustments. Research indicates that it is the teaching staff and culture within a given school that can largely determine if inclusionary practices - such as providing adjustments - are adopted or not in a school setting⁷. It suggests that even if a school has resources, they still have discretionary powers – often based on their own judgements – to refuse reasonable adjustments.

For this reason, in some of our advocacy matters, many parents and carers of children and young people express the importance of having a choice and options for schooling. If they are unable to resolve a dispute with a particular school, having other options to meet their loved ones' needs is their primary concern. They see value in having specialised disability expertise that can support complex needs within in safe environment where there is a smaller teacher to student ratio, compared to mainstream classrooms. Having specialised schooling as an option is significant for families who live in RRR areas, where due to thin markets, there is a limited selection of schools.

Accordingly, we view that specialised schooling has a place, and families must be given a choice in the type of educational setting that their family member with disability attends. DA supports the DRC's recommendation 7.15 that proposes an alternative approach where non-mainstream schools are integrated as much as possible with mainstream schools to maximise participation of students who attend non-mainstream schools. In line with Commissioners Mason and Ryan, we agree that the highest priority is given to overcoming barriers to inclusive education in mainstream schools so all students with disability have the maximum opportunity to learn in mainstream schools. However, we also concur that not all the needs of children and young people with complex needs will be met in mainstream schools, even when the principles of inclusive education are implemented.

We also agree with Commissioners Manson and Ryan that perhaps overtime as mainstream schools become more inclusive - as critical steps are achieved - the need for specialised schools may decrease. However, we hold concerns that the timeline to abolish specialised schools by 2051 may create challenges where milestones are not easily met for some schools.

⁷ Tat, K., & Hussain. (2016). Using quality of family life factors to explore parent's experience of educational provision for children with developmental disabilities in rural Australia. *International Journal of Disability Development and Education* 64:328 – 344.

This can result in time pressures that contribute to hastily implemented policies and ensuing poor practices.

For this reason, we do not agree with recommendation 7.14 and the phasing out of segregated specialised schools by 2051. While this may seem like a considerable amount of time, the shift needed within the sector and within the community is significant. It will require a substantial effort to address the current teaching shortage, a shift in community and cultural perceptions, educating teaching staff, and time to embed new practices and skills. There needs to be a balance in moving toward inclusive education while providing choice for families and students.

Recommendations

We, in part, support the recommendations regarding [a roadmap for inclusive education](#) proposed by the Australian Coalition for Inclusive Education (ACIE), which outlines measures to move toward inclusive education, which include:

- 1.) *Prevent suspensions and expulsions of students with disability:* Firstly, develop a consistent approach that aims to reduce the number of suspensions and expulsions of students with disability. Secondly, a reduction of suspensions and expulsions can be supported by the mandated use of behaviour support plans. This includes providing schools with resources for their staff to undergo training in disability informed teaching. Schools must also demonstrate that they are providing meaningful and appropriate adjustments for students with disability within behaviour support plans.
- 2.) *Eliminate restrictive practices:* Develop a framework that is working toward eliminating the use of restrictive practices and provide clear parameters around when it may be used – that is, as a last resort only that protects the safety and well-being of students. Again, schools must demonstrate a concerted effort to minimise the use of such practices. In cases where restricted practices must be used, clear evidence and justifiable reasons must be provided.
- 3.) *Stop gatekeeping and other forms of discrimination:* the NSW Government develops an approach to monitoring and responding to disability discrimination. Regulatory bodies that respond to discrimination are external, fair, and impartial, and Anti-

Discrimination NSW is empowered to enforce reasonable adjustments (discussed in more detail below).

- 4.) *Increase educational outcomes*: Schools must collect and report on data. Within this, they must demonstrate that they have implemented measures for inclusive education, and key performance indicators are set for schools to achieve positive education outcomes for students with disability. These indicators must be determined through a co-design process with people who have lived experience of the education system and disability education experts.

As mentioned above, we do not support a timebound abolishment of specialised schooling. We do, however, agree with the four other measures for inclusive education. Only when these are fully realised and achieved can we consider a gradual phase out of specialised schooling.

In addition to these measures above are other systemic issues regarding the current complaints' mechanisms, *Anti-Discrimination Act NSW 1992* and the *Disability Standards for Education 2005*, that need to be addressed to work toward achieving inclusive education. This is discussed next.

Current complaints mechanisms

A core issue for students with disability is the current complaints mechanism within NSW. It offers little recourse for families and students. The experiences shared by many families tell of a system that investigates itself – and due to this, it lacks objectivity, accountability, transparency, and timeliness. The principal backs the teacher, the regional office backs the principal, and it then follows a bureaucratic line within the Department of Education (DOE). The problem here lies in the complaints process not being independent. As one parent described:

The Department investigates itself. So, the complaint can go right to the top, but then the complaint goes back to the person who you're actually complaining about in the first place, to make good on that complaint. So, I have yet to come across a complaint that's ever been upheld by the Department of Education as being a valid complaint.

Anonymous parent in 'Falling Behind' – DA's report on barriers to inclusive education

The lack of accountability that families can experience, has a flow on effect where both parents and the child can suffer significant mental distress. It is common to observe a fundamental breakdown in communication, trust and respect between the school, and the family and student. Often, the problem can escalate to a point where the issues in dispute become unresolvable, and the family is left with no option but to take legal action or leave the school. Conversely, some families living in RRR areas, may be reluctant to escalate matters as they fear 'back door' communications between local schools. Particularly in RRR areas, where there are often close-knit ties between schools and or school staff and hence a risk of a lack of anonymity for the family and student. In this, a child or young person can become known as a 'problem' among schools in a region. This can then lead to gatekeeping at other schools, leaving little to no options for families.

In terms of making complaints about reasonable adjustments and inclusion, the complaints system as it currently stands, is unevenly geared to favour the education system. There is a need for an independent external body to resolve disputes before the family and the school become too entrenched in their positions that it becomes impossible to reach a resolution.

The Anti-Discrimination Act and Disability Standards for Education

If parents are dissatisfied with resolutions proposed regarding reasonable adjustments via internal reviews within the DOE (as described above), they can pursue matters further with ADNSW. In this, the *Anti-Discrimination Act NSW 1977* is drawn on to resolve disputes involving reasonable adjustments within schools at public mainstream schools⁸. Families and or parents may view that matters are not resolved satisfactorily via internal review. Therefore, they may feel compelled to pursue matters as formal discrimination complaints due to a lack of alternative options for schooling. Having the ADNSW as an escalation point for disputes with schools is important for families in RRR areas where families are essentially a 'captive market' and are limited in their choices to send their child elsewhere.

⁸ This is not applicable for private schools.

However, pursuing complaints with the ADNSW is limited. If a school fails to provide a 'reasonable adjustment' it can be seen as unlawful discrimination. However, a school may refuse to provide an adjustment if it is deemed 'unreasonable,' because it will impose an '*unjustifiable hardship on the provider*'⁹. The issue is that while it may be discriminatory to not provide an adjustment, a school can legally refuse to provide an adjustment if it is deemed 'unreasonable' because it places undue hardship on the school or organisation. For under-resourced schools, this is understandable as providing an adjustment may lead to adversity for the school and potentially other students.

However, a core issue that is not well regulated is that some schools simply fail to abide by the law and refuse to provide adjustments due to misinformed discriminatory attitudes. When this occurs, ADNSW seemingly have no powers to enforce action on an organisation or school to provide reasonable adjustments. Moreover, while ADNSW is a free service, they are often unable to take on matters due to limited resources. This poses as a challenge to obtain a meaningful resolution via external pathways such as the ADNSW. When advocates are supporting families and students to make decisions about how they want to address instances of discrimination, this access challenge need to be factored into the decision making on whether to pursue further action. Often it means that the client's options are limited to trying to resolve disputes with the school directly with no oversight from an independent body, noting that the ADNSW primarily acts as a conciliation service.

Recommendations

- 5.) *The Anti-Discrimination Act NSW 1977 is amended to include positive obligations for schools to provide reasonable adjustment and promote full and equal participation in public life.*
- 6.) *In addition to positive obligations, there are greater penalties when schools fail to take reasonable action to promote equal and full participation. To do this, ADNSW needs to be granted additional resources to support families and students, and more powers to enforce reasonable adjustments.*

⁹ b d

7.) *Increased funding and support for advocacy* so that families and or students are better equipped to navigate the complaints process. In addition, schools have mandated requirements to refer to external advocacy agencies in the first instance of a disagreement between families and teaching staff regarding education issues.

Conclusion

Students with disability need a fair go. Education is a crucial factor in setting children and young people up for their later lives. To benefit from schooling, students with disability require inclusive education. As this submission has discussed, there are varying opinions around what inclusive education looks like. We recommend that working toward inclusive education involves preventing expulsions and suspensions, stopping gatekeeping, eliminating restrictive practices, and increasing educational outcomes. We also recommend reforms are made to the current complaints systems that exist within the DOE and the ADNSW. We argue that only when these measures are achieved over a sustained period, that we can move toward a gradual phase out of specialised schools. Until then, students with disability need to be given a choice and access to alternative and schools. These need to be integrated as much as possible into mainstream schools to maximise inclusion. Lastly, we understand that there are differing views regarding the abolishment of specialised schooling. But we trust that the NSW Government will engage in robust consultation and co-design to determine an education system that is fair and just for students with disability.