

Submission
No 75

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

Organisation: Australian Centre for Disability Law (ACDL)

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Submission in Response to the inquiry into children and young people with Disability in New South Wales Educational Settings

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Acknowledgement of Country

The Australian Centre for Disability Law acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About ACDL

The Australian Centre for Disability Law (“ACDL”) is a specialist Community Legal Centre established in 1994. Our vision is a society in which persons with disability live with dignity, wherein their human rights and fundamental freedoms are recognized, respected, protected, and fulfilled. ACDL was established to help people with disability and their supporters to learn about and pursue their rights under the *Disability Discrimination Act 1992 (Cth)*.

ACDL provides free specialist legal advice, information, referrals, and advocacy services, where our clients have experienced discrimination on the grounds of disability in any public area of life, including education, employment, and accommodation. In some cases we assist clients with a complaint to either the Anti Discrimination NSW (ADNSW) or the Australian Human Rights Commission (AHRC). This includes drafting complaints, advising on options and/or representing a person in a conciliation conference.

In 2022-2023, 53% of ACDL’s disability discrimination casework was in the area of education followed by 20% in employment, and then 15% in the area of goods services and facilities.

We also run a Learning Together project whereby the aim of the project is to make it easier for students with disability to stay in mainstream education and reach their full potential.

We use our expertise in supporting clients experiencing discrimination within educational settings to inform our submission, in response to the key Terms of Reference provided by the Committee.

Introduction

Dear Committee Chair,

The Australian Centre for Disability Law (“ACDL”) thanks the Portfolio Committee No. 3 for the opportunity to respond to the Terms of Reference of this **Inquiry into children and young people with disability in New South Wales educational settings**.

This submission:

- I. focuses on the experiences of children and young people with disability in New South Wales educational settings, and, more specifically, the issues that they currently face regarding disability discrimination law.
- II. draws upon the experience of ACDL’s advocacy for people with disabilities in NSW public and private schools to identify barriers to the full participation for students with disability, including those in regional and remote communities; and
- III. assess whether existing regulatory and oversight mechanisms are sufficient to enable students with disability to fully participate in the NSW educational setting.

We note that details in the case studies provided have been changed to de-identify our clients (including use of pseudonyms).

I commend Ms Sarah Abdou and Ms Rebecca Belzer for researching and compiling this report.

Your faithfully.

Mark Patrick

Managing Principal Solicitor

Terms of reference

This submission responds to:

ToR 1 (a)- the experiences of children and young people within educational settings and measures to better support students with disability, and

ToR 1 (b)- the barriers to safe, quality and inclusive education for children with disability in schools, early childhood education services and other educational settings.

ToR 1 (c)- The specific needs of children and young people with disability in regional, rural, and remote schools, early childhood education services and other educational settings.

ToR 1 (e)- the benefits for all children and young people if students with disability are provided with adequate levels of support

ToR 1 (i)- the measures necessary to ensure the learning environment is safe and inclusive for all students, teachers and school support staff

ToR 1 (j)- the impact of policies regarding suspensions and expulsions

ToR 1 (k)- the impact of policies regarding the use of restrictive practices

ToR 1 (m)- whether existing regulatory and oversight mechanisms are sufficient to protect and promote the rights of children and young people with disability, and protect those children and young people from abuse, neglect and exploitation

Terms of Reference 1 (a): The experiences of children and young people within educational settings, and measures to support students with disability.

Parents with children with and young people with disability will contact ACDL complaining of disability discrimination within the educational setting.

Complaints of disability discrimination from parents and caregivers of children and young people with disabilities commonly fall into one of the following categories:

- Refusal to enrol a child with a disability
- Failure to enter into an Individual Education Plan or failure to effectively implement an Individual Education Plan
- Failure to implement reasonable adjustments (including, but not limited to, refusing to grant additional time in exams, refusing onsite therapy/treatment, refusal to provide a 'quiet' or 'safe' space for a child with sensory needs and adjustments to educational activities such as assemblies and excursions)
- Exclusionary disciplinary practices (i.e., suspension, expulsion, enforced part-time attendance)
- Exclusion from school events such as excursions
- Failure to provide medication for a child in accordance with agreed medication plan
- Less favourable treatment on the grounds of disability, otherwise not listed above.

Providing students with disability adequate support within educational settings facilitates an inclusive environment that enriches the educational experience for all students, preparing them for a society that values diversity and embraces the unique contributions of every individual. The benefits of providing this support are not limited to only students with disability. It will also foster empathy, understanding, and acceptance within the schooling community and society at large.

Case Study 1– Impact of Restrictive Practices

Tyrone is 9 years of age and has anxiety, attention-deficit hyperactivity disorder (ADHD), autism spectrum disorder (ASD), developmental delay, and oppositional defiant disorder (ODD). Between September 2020 and August 2021, Tyrone attended a public school. Tyrone required adjustments to be made to the programs and activities provided or facilitated by the school and these were made known to the school. One of these adjustments included Tyrone being allowed to bring noise-cancelling headphones to school to help him alleviate stress and aggression when dealing with noise, commotion, or crowded situations. Despite Tyrone's mother contacting the school multiple times to consult on the preparation and implementation of a Behavioural Management Plan, the school refused to properly engage in this discussion and downplayed the importance of these Plans for Tyrone. He was ultimately denied the reasonable adjustment of wearing his noise-cancelling headphones at school, and no plan was put in place.

On one occasion, the school performed an unexpected fire drill. During the fire drill, Tyrone was not provided his noise cancelling headphones and became aggressive towards a student and teacher. Tyrone was then restrained in the school oval by four teachers, and then isolated in a sensory room for approximately 20 minutes. Tyrone was subsequently suspended from school due to this aggressive behaviour for a period of three days. During this period of suspension, mother made another request to the school for a Behavioural Management Plan be implemented in order to prevent incidents of aggression and restrictive disciplinary practices from occurring again. Whilst the school did respond with to Tyrone's mother with a preliminary Behavioural Management Plan, there was collaboration with Tyrone or his parents during the preparation of the plan, it did not properly recognise Tyrone's needs or the impact of restrictive disciplinary practices on him. When Tyrone's suspension ended, he was too afraid to school and was kept home until he was able to find him a new school.

Tyrone has now been diagnosed with post-traumatic stress disorder by a child psychologist, with this diagnosis being directly linked to the fire drill incident and the trauma he experienced with the subsequent use of restrictive practices. His mother lodged a complaint with the AHRC and the matter was settled during the conciliation conference.

Case Study 2 – Failure to implement Individual Education Plan

Sam is a 13-year-old and lives with autism spectrum disorder (ASD), attention-deficit hyperactivity disorder (ADHD), and generalised anxiety disorder (GAD). When Sam started Year 7, his parents sent the school his psychological report which details recommendations and suggested accommodations to assist him in his learning. Sam's parents had conversations with the school counsellor, the Learning Support Officer, and his teacher regarding the implementation of an Individual Education Plan (IEP), which would be informed through the perspectives of the school, Sam and his parents, as well as his psychologist. Despite these conversations, no IEP was put in place. Instead, the school implemented a Learning Pathway Plan and put Sam into a Transition class without consultation with him or his parents. Sam's psychiatrist and his parents advocated for an attendance regime allowing him to attend school every second day. This was because Sam was experiencing great anxiety and bullying at school, and his attendance was dropping below what was required; the attendance regime sought to allow Sam to be more comfortable at school. The school rejected the recommendations made by the psychologist or psychiatrist, and instead implemented a partial daily attendance plan. Sam continued to fall below the school's required attendance plan resulting in him falling behind in school.

Terms of Reference 1 (b): The barriers to safe, quality, and inclusive education for children with disability in schools, early childhood education services and other educational settings.

There are various barriers for inclusive education including lack of knowledge and awareness of rights, attitudes which are resistant to change a lack of willingness and potentially resources to enable full and proper participation for people with disabilities.

Lack of knowledge

Parents, caregivers, education providers are sometimes unaware of their rights and responsibilities under the *Anti-Discrimination Act 1977* (NSW) and *Disability Discrimination Act 1992* (Cth) ('DDA') and *Disability Standards for Education 2005* ('DSE') for a multitude of reasons including language barriers, having their own disabilities, caring and work commitments.

Attitudes towards inclusivity

The opinions of medical and allied health professionals often crucial in establishing a thorough understanding of a child or young person's needs, capabilities, and they will often provide advice to educational providers. Medical and allied medical professional recommendations inform appropriate adjustments and supports which facilitate inclusive educational environment for students with disabilities.

The resistance of schools to these recommendations is however a barrier to safe, quality, and inclusive education for children with disability. We have encountered numerous cases where a student's needs are ignored and minimised. Educational providers, when responding to the needs of students with disability often do so with problematic attitudes that are resistant to change resulting in negative consequences for the child or young person.

Recommendations:

1. Educational institutions to eliminate any harmful attitudes held towards students with disability and including negative expectations of their capabilities, and by doing so relevant

ensuring they are adhering to the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD') provisions.

2. Ensure that all parents across public and private schools are provided with knowledge of rights and equip them with appropriate communication tools to advocate on behalf of their child.
3. Ensure all educational institutions have the required resources to equip their staff with the necessary knowledge of their obligations towards students with disabilities, and to ensure that they have tailored approaches for children with disability.

Case Study 3 – Failure to Adhere to the Recommendations of Medical and Allied Health Professionals

Kara is a 13-year-old who lives with Perthes Disease and uses an electric wheelchair. Her occupational therapist supplied a report to her school stating that she does not need to be supervised more frequently than other students, due to there being the support of an electric wheelchair. Her occupational therapist specifically stated she is able move around the school without assistance from a Learning Support Officer. However, Kara's school resisted this recommendation and refused to allow her to travel independently, claiming that she was a risk to herself and others in the school. The school sought to justify this through a risk assessment they conducted without Kara or her family's knowledge, with this involving an independent occupational therapist attending the school and providing a report concerning Kara's ability to move around the school independent. Kara's parents only learnt of this risk assessment from Kara's medical records at her hospital.

The imposed, substantial, and unnecessary supervision of the Learning Support Officer prevented Kara from interacting with her peers comfortably and made her feel singled-out and treated less favourably by the school due to her disability. Her mental health was negatively impacted, in which she considered obtaining psychological support Kara's experiences featured the uncommon situation of a school implementing more support than necessary for Kara; however, this support reflected their misconceptions concerning people with disability and their failure to consider and adhere to the expertise of health professionals. As a result of this, Kara suffered negative consequences socially and psychologically.

Terms of Reference 1 (c): The specific needs of children and young people with disability in regional, rural, and remote schools, early childhood education services and other educational settings.

Children and young people with disability in regional, rural, and remote educational settings often face unique challenges, such as;

- Lack of awareness of rights
- Inadequate infrastructure and transport
- Diminished access to healthcare professionals and specialists
- Staff shortages

Access to healthcare is crucial for addressing individual needs particularly for early identification and intervention, and seeking expert opinions on suitable adjustments for children and young people with disability. Having greater access to healthcare professionals and specialists will also enable students to be able to procure appropriate opinions relating to their diagnoses and recommended adjustments and accommodations.

Students with disability in such areas lack the option of changing schools and attending any other educational institutions in their area. Unlike students in metropolitan areas who usually have access to multiple schools within their local vicinity, students residing in regional, rural, or remote areas are often unable to transfer to another educational institution where they may be better supported.

Recommendation

Provide regional and remote communities with additional resources to bridge gaps through increased investment in educational resources, improved infrastructure, and the implementation of incentives to combat the shortage of educational staff and ensure compliance with the UNCRPD.

Terms of Reference 1 (i): The measures necessary to ensure the learning environment is safe and inclusive for all students, teachers, and school support staff.

Improving the educational experiences of children and young people within educational settings, will necessitate:

1. Equipping schools with knowledge and resources including relevant policies and training to staff as how to implement adjustments and ensure the learning environment is safe and inclusive.
2. A positive obligation to be imposed on the Department of Education to inform parents and caregivers with knowledge regarding their rights and the obligations of educational institutions towards students with disability, and the available adjustments relevant to these obligations.
3. The development of clear avenues of communication between caregivers and educational institutions, for example having a policy or procedure that outlines the steps parents need to take to support their children including the specific points of contact.

Educating caregivers, children and young people with disabilities, and schools with knowledge regarding the obligations of educational institutions towards students with disabilities is crucial in ensuring the consistent provision of equitable and supportive learning environments. Additional support and information to schools regarding the legal frameworks and educational policies relevant to supporting students with disability is essential in ensuring compliance with the law and fostering an inclusive learning environment.

In our experience, we have witnessed the deep power imbalance between educational institutions and caregivers attempting to enforce the rights of children and young people with disabilities. Particularly, we have seen caregivers being hesitant in exploring and pursuing avenues through which they can obtain support for their child's learning, and often they have accepted the refusal of schools to provide supportive environments as the final authority. The continued failure and reluctance of some schools in implementing effective

learning supports relies on caregivers remaining uninformed about the rights and entitlements of their child under state, federal and international laws.

ADL advocates for collaborative communication between caregivers and educational providers which in turn, will provide a more inclusive and accommodating learning environment for students with disability in accordance with Disability Standards for Education 2005 ('DSE'). Without clear communication, information regarding a student's disability, specific challenges, and required learning support may be overlooked or misunderstood. Limitations in communication also restricts caregivers' understanding of their child's experience in school, especially concerning the implementation and effectiveness of Individual Education Plans (IEPs) and reasonable adjustments in equipping their child with the necessary tools and resources to reach their full potential. (

One example of ineffective communication is outlined in the case study below, which featured a parent's repeated attempts at communication with the school which were ultimately ignored. This example provides only a small glimpse into the issues of communication experienced by caregivers of students with disability, which may result in unfair treatment, behavioural issues, academic struggle, reluctance to attend school, or psychological distress.

Case Study 4– Failure in Facilitating Effective Communication

Alvin is a 17-year-old student living with attention-deficit hyperactivity disorder (ADHD) and autism spectrum disorder (ASD). He is entering Year 12 in high school, and his family have faced several issues when attempting to communicate Alvin's needs with the school.

The first issue involved the adjustments that were provided to Alvin by his school. A preliminary Individual Education Plan (IEP) was implemented by the learning support teacher halfway through Year 10. The learning support teacher also promised to update the IEP with further adjustments when she received a report from Alvin's healthcare professional, detailing his needs. A few weeks after the implementation of this preliminary IEP, Alvin's mother provided the learning support teacher with the report via email, and requested further adjustments in line with the recommendations of Alvin's healthcare professional. She received no reply, and later learnt that the learning support teacher had

been replaced; she also learnt that the new staffing member had taken out several adjustments from Alvin's IEP without consultation. When Alvin's mother emailed the new learning support teacher to request further adjustments, again no reply was given. She emailed the new learning support teacher again prior to the Year 10 exams asking for some adjustments to help Tyson during the stressful examination period. She was told that Alvin would be given additional time be allowed to complete the examination in a separate room, however, later learnt from her son that these were not complied with.

Alvin experiences difficulty with subjects that are content-heavy and his mother had informed the school of this via email prior to Alvin selecting his subject preferences for Year 11 and 12. Despite this, Alvin was given multiple content-heavy subjects that he did not select as a preference, and when his mother emailed the school about this, they did not receive any reply. Throughout Year 11, Alvin's mother sent multiple emails and had multiple meetings with the school to ask for learning adjustments, however, none of these were complied with. This resulted in Alvin experiencing great difficulty in school.

On the evening of the last day of term for Year 11, Alvin received an email stating that he had not met the course requirements for two of his subjects as he still had outstanding N-award letters. As these letters were sent to Alvin when the school had begun a 2-week holiday break, he was unable to access the material necessary (such as workbooks and textbooks) to complete all the outstanding work. He was told that if he was not able to complete this work, then he would not be able to enter Year 12. This caused Alvin extreme anxiety, distress, depression, and suicidal ideation over the 2-week holiday period. Over the holiday period, Alvin was able to complete all his outstanding work to clear his N-award letters, however, his school continued refusing to overturn the decision to mark one of his subjects as incomplete. The school stated that they would no longer be able to do anything to help Alvin, and that he would need to send an appeal to NESA or drop the incomplete subject and pursue the non-ATAR route.

Terms of Reference 1 (j): The impact of policies regarding suspensions and expulsions.

ACDL receives multiple complaints from parents, grandparents and caregivers regarding the discriminatory treatment of children through the inappropriate use of disciplinary suspensions and expulsions by teachers. Whilst at times suspensions and expulsions are justified, at times negative action taken by schools towards students with disability and may be avoided if schools followed behaviour management plans etc adequate support and adjustments had been implemented.

At times, educational institutions fail to implement learning adjustments to mitigate or dispel aggressive and/or violent behaviours. Expulsions or suspensions often do not address the underlying issues or reasons for behavioural issues and can exacerbate these challenges rather than resolving them.

Removing students from their educational environment impedes the learning progress that they have made during the school year. Students with disability may already require additional supports or accommodations to assist them in their learning; missed instructional time or support from teachers during a period of suspension or expulsion will therefore result in difficulty catching up to peers and keeping up with the curriculum and should only be used as a last resort. Due to this, there may be a decline in academic performance and an overwhelming sense of stress, insecurity, discouragement, and demotivation.

Additionally, exclusionary disciplines also contribute to the stigmatisation of students with disability, perpetuating negative perceptions and stereotypes. This can lead to feelings of alienation, resulting in difficulty integrating into the school community and gaining acceptance and support from their peers. School policies regarding suspensions and expulsions need to consider the social, mental, and emotional wellbeing of the child toll of such measures.

Case Study 5– Exclusionary Discipline

Sabrina is a 6-year-old who lives with attention-deficit hyperactivity disorder (ADHD), autism spectrum disorder (ASD), anxiety, and global developmental delay. Sabrina has been struggling at school, with this resulting in behavioural issues and dysregulation. This is largely due to the lack of adequate learning supports, in which the school has failed to appropriately collaborate with Sabrina's parents concerning the adjustments that would need to be implemented. Whilst the school states that they have adopted the recommendations given by Sabrina's medical practitioner, they have refused to inform Sabrina's mother of the precise details regarding their implementation.

As a result of this lack of support, Sabrina's behavioural issues have escalated into physical aggression against her teacher. This has resulted in multiple suspensions and enforced partial attendance to only 1 hr per day, with the school stating that these exclusionary disciplines are for the purpose of giving Sabrina's teacher a 'break' from her. Within the 2023 school year, Sabrina only attended 7 weeks of regular schooling.

These exclusionary disciplines have led to an exacerbation of Sabrina's anxiety and dysregulation, in which she feels isolated from her peers.

Case Study 6– Exclusionary Discipline and Failure to Medicate

Eloise is a 15 year old girl living in rural NSW. Eloise and lives with Autism Spectrum Disorder and two other disabilities. Eloise attends high school at a NSW public school., Eloise requires administration of a Schedule 'Controlled Drug' medication during school hours, and the details of this medication administration were agreed in the NSW Department of Education form, 'Parent Request for support at school of a student's health condition'. On at least 129 occasions during a 2 year period, disciplinary action was taken against Eloise at times when the school knew or should have known that her medication had not been administered at all, or had been administered late. This included 5 suspension. Across 2 years, Eloise missed 130 whole days and 158 partial days of her education, which had an extremely significant impact on her ability to obtain an education. Eloise fell behind her classmates in all subjects, including literacy and maths, and has now been enrolled in a specialist unit at a new school.

Eloise continues to struggle with keeping up with her peers as a result of the time she missed at school. During her time at the school, Eloise was also excluded from participation in 3 excursions and offsite activities. In addition to this, Eloise experienced less favourable treatment by one of her teachers who made negative remarks during classroom time, in the hearing of her classmates, regarding her 'weird' behaviour, being behaviour that was a direct symptom of another one of her diagnosed disabilities. The school admitted that the teacher required further training following this incident. Being forced to explain aspects of her disability meant Eloise experienced humiliation and embarrassment in front of her peers, as well as reduced social acceptance.

Terms of Reference 1 (k): The impact of policies regarding the use of restrictive practices.

Restrictive practices are disciplinary measures which are aimed at addressing student's behavioural issues and minimising harm in educational settings towards the individual and others. These restrictive practices can be grouped into four categories – physical restraint, chemical restraint, mechanical restraint, psychosocial restraint, and environmental restraint – and are only authorised to be used in emergency or crisis situations.

Like the use of exclusionary practices, the use of restrictive practices against students with disability are often in response to behaviours that could have been prevented if appropriate adjustments and learning supports were implemented. These restrictive practices often result in the student being blamed for their actions and wholly responsible for their behavioural issues, and often disregards a history of requests for greater support and adjustments.

In our experience, the most usual form of restrictive practice that students with disability experience in educational settings is seclusion, which involves leaving the student in an isolated area away from their peers and teachers. This often results in great trauma, an exacerbation of their behavioural issues, difficulty integrating back into school environments, and being hindered in their learning. The effects of this will be detrimental to their growth and development, and will no doubt be negatively impactful on their future outcomes.

Case Study 7– Impact of Restrictive Practices

Liam is a 9-year-old who has autism spectrum disorder (ASD), moderate intellectual disability, and severe language expressive and receptive disorder. During Year 2, Liam was subject to several disciplinary actions and other forms of punishment in response to behavioural and academic issues arising from the school's failure to provide reasonable adjustments for his disability.

On several occasions, Liam's food and water were withheld from him during lunchtime because he could not complete a classwork task. This practice was also coupled with isolating Liam from the rest of the peers during lunch, in which he would be directed to sit

on his own for a lengthy period of time whilst his classmates enjoyed their lunch together. On several other occasions, Liam was locked in the playground on his own for upwards of an hour at a time. This seclusion was used to punish him for crying and would involve him being unsupervised in a fenced area (3.5 metres high), with no bathroom. The withholding of food and water is highly inappropriate, with this also being confirmed by Liam's allied health professionals. The restrictive disciplinary practice of seclusion is also unauthorised within the NSW Department of Education 'Restrictive Practices Framework', except during crisis situations – this was not the case in these incidents. Liam was also subject to humiliation on one occasion, in which he was not given the opportunity to change his clothes when he accidentally urinated on himself. The restrictive practices used by the school on several occasions were often unauthorised and undocumented, therefore rendering its use inappropriate.

The school has described Liam's behaviour as problematic and aggressive and therefore these restrictive practices were necessary, detailing how he would not follow class directions, hit and spit on others, and self-harm. However, these behaviours are a result of the school's failure to implement reasonable adjustments and learning supports for his disability. Liam's mother had requested, on multiple occasions, for the school to provide Liam with a Learning Support teacher to implement a behavioural support and management plan prepared by his allied health specialists. The school refused to do so, stating that Liam's classroom teacher needs to be in control of the class, and having an additional person would take away the teachers control of the classroom. This was despite Liam's mother mentioning that this type of arrangement had been implemented successfully for students in other schools within the same local area. Instead, the school attempted to implement a Personalised Learning and Support Plan that did not support Liam's specific needs. Specifically, the plan was simply copied and pasted from the previous year with no amendments and involved no consultation or agreement from Liam's parents.

These restrictive practices and negative experiences has resulted in great trauma, an exacerbation of his behavioural issues, as well as difficulty attending school environments. He is currently in distance education and does not currently have any plans to return to school, therefore resulting in no opportunity for socialisation.

Terms of Reference 1 (m): Whether existing regulatory and oversight mechanisms are sufficient to protect and promote the rights of children and young people with disability, and protect those children and young people from abuse, neglect, and exploitation.

ACDL identifies three key areas of reform:

- 1) Amending the *Anti-Discrimination Act 1977 (NSW)* ('ADA')
- 2) Improving the processing times for complaints with the AHRC and ADNSW
- 3) Granting the AHRC and ADNSW with the power to make binding orders

Amending the ADA

The *Disability Discrimination Act 1992 (Cth)* ('DDA') is far more comprehensive than the *Anti-Discrimination Act 1977 (NSW)* ADA in setting out the positive duties of educational institutions and providers in providing reasonable adjustments to prevent and eliminate disability discrimination. Specifically, section 5(2), and 6(2) of the DDA outlines that disability discrimination includes the failure to make, or propose to make, reasonable adjustments for a person with disability. This provides a clear duty to ensure that children and young people with disability are not discriminated against.

In contrast, the ADA does not have an equivalent provision outlining the obligations of educational settings, therefore making it difficult for the Act to be relied on by individuals seeking to gain greater learning support at school or make a disability discrimination complaint through the state avenue. Rather, section 49L(4) of the ADA sets out an exception to disability discrimination being when a person with disability requires "services or facilities" not required by persons without that disability, and the provision of which would impose an "unjustifiable hardship" on the educational provider.

Improving Avenues for complaints

Current complaints mechanisms are not effective in dealing with breaches of legislation in an accessible or timely manner, making it difficult for individuals to hold educational institutions in breach of their obligations to prevent and eliminate disability discrimination within NSW educational settings accountable.

There are two avenues through which individuals with disability can make complaints regarding a breach of their rights within educational settings – the federal avenue, which deals with breaches of the *Disability Discrimination Act 1992 (Cth)* within the Australian Human Rights Commission (AHRC) conciliation; or the state avenue, which deals with breaches of the *Anti-Discrimination Act 1977 (NSW)* within Anti-Discrimination NSW (ADNSW) conciliation. Regardless of the avenue pursued, it takes approximately 6-12 months for the complaint to be listed and dealt with in the AHRC or ADNSW.

There are clear issues of accessibility and timeliness within the current regulatory and oversight mechanism, especially concerning the existing complaint mechanisms dealing with breaches of disability discrimination legislation within educational settings. These issues have discouraged individuals from seeking resolutions to their issues and have enabled educational settings to continue to be in breach of their responsibilities and obligations.

The lengthy nature of the complaints process, as well as the uncertainty of whether this lengthy process will result in a satisfactory outcome, is a point of great inefficiency within our existing regulatory and oversight mechanisms. It results in parents and caregivers being reluctant to have their complaints and issues resolved, children and young people with disability continuing to experience discrimination, and the legislative breaches of educational settings continuing to occur.

Granting ADNSW and AHRC additional powers

Should the complaints not settle at conciliation caregivers and parents of children and young people with disabilities are required to make an application either to the Federal Circuit and Family Court of Australia (FCFCoA) or the NSW Civil and Administrative Tribunal (NCAT).

Therefore, despite individuals being able to advance their complaints to ADNSW and the NCAT as self-represented litigants, without any cost, the restrictive nature of the ADA makes it difficult for satisfactory outcomes to be reached. This discourages individuals from pursuing this state avenue to resolve issues experienced within their educational institution due constraints of time, additional stress, and the availability and cost of legal representation involves. These factors hinder many individuals from pursuing their complaint further, regardless of the merits of their case.

Recommendation

Grant AHRC and ADNSW powers including;

- Enhanced power to investigate complaints
- Granting the governing bodies the power to make binding decisions

Concluding Remarks & Recommendations

ACDL submits that various steps can be taken to improve the experience of children and young people in educational settings. Increasing awareness of rights and providing adequate levels of support will encourage greater communication between teachers and caregivers of both students with disability and without disability, enabling parents to be more involved in the learning of their child. The dynamics within the school community would also be improved, reducing stigmatisation around disability, and instead encouraging students to learn about the experiences and perspectives of others. Overall whilst some regulatory mechanisms are effective in promoting the rights of people with disabilities, ACDL advocates for greater reforms to ensure that individuals with disabilities' rights are protected.

Summary of Recommendations;

ACDL submits that these recommendations below will enhance the experience of children with disabilities in the NSW educational setting and better protect against disability discrimination:

1. *Ensure that all parents across public and private schools are provided with knowledge of rights and equip them with appropriate communication tools to advocate on behalf of their child*
2. *Ensure all educational institutions have the required resources to equip their staff with the necessary knowledge of their obligations towards students with disabilities, and to ensure that they have tailored approaches for children with disability.*
3. *Provide regional and remote communities with additional resources to bridge gaps through increased investment in educational resources, improved infrastructure, and the implementation of incentives to combat the shortage of educational staff*
4. *Equip caregivers with knowledge regarding the obligations of educational institutions towards students with disability, and the available adjustments relevant to these obligations;*
5. *Develop of uniform policies and procedures enabling avenues of communication between caregivers and educational institutions;*
6. *Equip schools with knowledge and resources to train their staff as how to implement adjustments, and ensure the learning environment is safe and inclusive.*

7. *Amend the Anti-Discrimination Act 1977 (NSW) to include reference reasonable adjustments*
 8. *Improving the processing times for complaints with the AHRC and ADNSW by granting funding to these bodies*
 9. *Granting the AHRC and ADNW with the power to make binding orders to ensure complaints of disability discrimination are adequately dealt with.*
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