

**Submission  
No 88**

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

**Organisation:** Australian Neurodivergent Parents Association (The ANPA)  
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**From: Sarah Langston**

**President**

**Australian Neurodivergent Parents Association (The ANPA)**

[www.theanpa.org.au](http://www.theanpa.org.au)

14th of May 2024

**To:**

The Hon. Abigail Boyd, MLC

Chair, Portfolio Committee No. 3 - Education

**To the Committee,**

The Australian Neurodivergent Parents Association (The ANPA) wish to add a brief written response to NSW Legislative Council Portfolio Committee No. 3 - Education Inquiry into children and young people with Disability in New South Wales educational settings.

### **Opening comments**

The ANPA, as an incorporated Association and Disabled People's Representative Organisation (DPRO) in NSW, firmly asserts its priority voice in shaping policy direction on Disability issues. We assert this in accordance with General Comment No. 7 of the UNCRPD Committee 2018. Our response is rooted in the authentic experiences of our members and the broader Neurodivergent community within the NSW Public Education system; the majority of which are families where intergenerational Neurodivergence is a feature.

Within the educational landscape of New South Wales, Neurodivergent children encounter multifaceted challenges stemming from systemic barriers that perpetuate their exclusion from mainstream educational settings. These barriers, deeply entrenched and historically rooted, not only hinder access but also undermine the fundamental rights of Neurodivergent individuals to equitable and inclusive education.

Simply put, schools in NSW were never designed with us as a people in mind. As a result, they are inaccessible. For Neurodivergent students to be present in NSW schools and for disability supports to truly work, they must be re-designed with us involved. They must be re-designed in partnership with labour-force, and schools must be funded properly for fair and safe conditions for all.

We must stop asking that disability supports, training and implementation come at a cost to teachers' time, safety and well-being; and we must also stop suggesting that the answer is segregation. Neither proposal is lawful.

Neither, also, is true. With proper funding, staffing and training, and proper partnership with Disability leaders and Education leaders, an accessible, equitable and fair schooling system that supports Disabled children to access the curriculum is completely within reach.

### **Current barriers**

It is the view of The ANPA that current structural barriers to proper support of children from our community to participate in NSW Schools are as follows:

1. Hostile and controlling attitudes toward Neurodivergent Children and their families from teachers, school executives, and the Department of Education - shaped by a heavy emphasis over time on behaviourist ideology, including 'Positive Behaviour Support';
2. Severe under-funding of NSW Public Schools over time and the diversion of public funding to private schools over time; failure to fund to the level of the Gonski reforms;
3. Lack of Neurodivergent leadership and oversight in the design and implementation of educational reform; leading to inappropriate policy development that does not reflect the needs and priorities of the Neurodivergent community with respect to education;
4. Long-term conflict between policy actors over resources and conditions, and a lack of political will to balance the *UNCRPD 2008* with the *Fair Work Act 2009*; political allegiance to industry forces (the NSW Teacher's Federation) desire for segregation taking inappropriate precedence over the rights of Disabled people, in breach of the *UNCRPD*;

5. Inaccessible environmental and curriculum design for access in NSW Schools; a lack of funding and training needed for implementation even when this design exists; and an overall lack of Universal Design meaning that schools are overwhelming, exclusive spaces that Neurodivergent students struggle to survive in, let alone learn in;
6. A lack of incentive to change conditions or practice due to a lack of legal consequences for excluding Neurodivergent children. This has been achieved through the deployment over the last two decades of Behaviour Support plans as a buffer against legal action, on the basis of the precedent set in *Purvis v NSW* 1997; and a lack of legal literacy among parents of Neurodivergent children regarding the fact that signing such plans means agreement that this planning is a) sufficient to bring their child to the level of the comparator in their school and b) is being effectively implemented in their school. The Department of Education uses these plans to make suspension and expulsion of Neurodivergent students superficially legal, and the relative poverty of these families means that *Purvis v NSW* 1997 is yet to be tested in any meaningful way in the FCOA. Neurodivergent families are largely poor; and cannot afford the legal fees needed to contest, and overturn, this complex precedent. Recently proposed changes to costs rules for those bringing Federal Discrimination claims, and the DRC recommendation that the comparator test be removed may empower families to challenge *Purvis*, which is promising.
7. Article 23 breaches of the UNCRPD by the NSW Government over time - primarily, a lack of support for Neurodivergent Parents to parent their school-aged children and to engage with the NSW Public Education system in an accessible way for their families; causing difficulties in maintaining attendance and academic participation;
8. A cycle of inaccessibility that reinforces itself by cycling students out of the system. As students are forced out of the system, there are less and less of them present in the system, creating a sense that there are less Disabled children with needs in the system; and therefore justifying not funding these supports;
9. A lack of data capture of relevant information about how many Disabled students are exiting the system, their experience of the system, and why they are leaving. Exit data for children is captured, but limited to very specific categories, and executives are unable to record inaccessibility or unmet disability needs as a reason for exiting NSW Public Schools; especially if that child is not in a support unit. The Centre for Education

Statistics and Evaluation have also confirmed that they do not capture data regarding how many Disabled children leave NSW Public schools, the reasons why, nor how these students feel about their experiences upon leaving. Feedback is not happening; which is a barrier to the change needed for proper support of these students to stay. Governance regarding education in NSW is data driven; and the data being captured is being gathered very selectively. Further, surveys such as the 'Tell Them From Me' survey are largely inaccessible to Disabled children with higher support needs, meaning their experiences of school are not being captured by these efforts to document student experience.

10. ADHD is not on the discon sheet. It needs to be.

### **Attitudes**

Attitudes towards Neurodivergent children, often influenced by outdated behaviorist ideologies, foster negative institutional perceptions and discriminatory practices within educational environments. For instance, we recently encountered a case where a Year Seven student, struggling with sensory overload in a classroom environment, requested access to noise-canceling headphones.

However, the request was denied by school staff who failed to recognize the student's need for sensory accommodation. This incident highlights the pervasive misunderstanding and lack of accommodation for Neurodivergent needs within the education system; and a lack of listening to Neurodivergent students as the authority on their lives and needs.

### **Lack of explicit ND leadership and oversight**

Furthermore, the absence of Neurodivergent leadership and oversight in educational reform exacerbates existing inequities and impedes progress towards meaningful inclusion.

The ANPA underscores the imperative for genuine representation and participation of Neurodivergent voices in policy development and governance structures to ensure that reforms are informed by lived experiences and grounded in the principles of social justice and equity.

Allowing Neurodivergent communities to inform policies that impact Neurodivergent students ensures these policies actually work. It is more efficient; and aligned with the UNCRPD, which heavily emphasises the importance of Disabled self-determination.

### **Inadequate funding**

Inadequate funding poses a significant barrier to the creation of safe and inclusive educational environments for Neurodivergent children. The ANPA underscores the urgent need for equitable resource allocation and collaborative efforts among stakeholders to address funding disparities and enhance support services, thereby fostering an environment conducive to the holistic development of Neurodivergent learners.

### **Inappropriate disciplinary policies**

Moreover, the ANPA calls for a comprehensive review of disciplinary policies to ensure that they are equitable and responsive to the diverse needs of Neurodivergent students.

Additionally, strict oversight and accountability measures informed and led by the Neurodivergent community are essential to prevent the inappropriate use of restrictive practices, safeguarding the physical and psychological well-being of vulnerable students. Safety must be assured through appropriate staffing, funding and accessible environmental design instead.

### **Ending the reign of *Purvis***

Until *Purvis v NSW* 1997 is successfully contested or otherwise eradicated as a routine and assured defence to disability discrimination claims against the Department of Education, it is unlikely that the Department will have much motivation to improve conditions for Neurodivergent students in any meaningful way. A shift in the power balance will be necessary to correct this current situation. This may come internally; or from exogenous shocks to the system through political action. It would also be a good outcome of this inquiry, that *Purvis* in some way be challenged or muzzled.

### **Concluding comments**

In conclusion, the ANPA emphasizes the critical importance of collaborative efforts and meaningful resourcing to dismantle systemic barriers and advance the rights of Neurodivergent children to inclusive and equitable education in New South Wales.

We stand committed to further engaging with stakeholders and advocating for sustained policy reform and resource allocation to effect meaningful and lasting change within the education system.

Thank you for considering our submission.

Yours sincerely,

Sarah Langston

**President**

Australian Neurodivergent Parents Association (The ANPA)

