



Association for Children with Disability

Snapshot from the Disability Royal Commission #1: Gatekeeping and exclusionary discipline

July 2024

Background

Association for Children with Disability (ACD) is the leading advocacy service for children with disability and their families in Victoria. We are a not-for-profit organisation led by, and for, families of children with disability.

Our vision is an inclusive community where children with disability and their families thrive.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability made 222 recommendations, including 15 specifically relating to education.

At the heart of the Disability Royal Commission (DRC) report was that students with disability continue to experience poorer education outcomes than their peers, and more can be done to address violence, abuse, neglect and exploitation of students with disability.

Many of the DRC findings reflect what we hear from families. This snapshot focuses on the experiences families raise with ACD about gatekeeping and exclusionary discipline. It highlights opportunities to extend on the DRC recommendations that are specific to the Victorian education system to improve outcomes for students with disability.

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Executive summary

Students with disability experience high rates of gatekeeping and exclusionary discipline in school. These are not new issues for families raising children with disability. However, over the past five years, the percentage of calls to ACD's Support Line for gatekeeping, reduced attendance, early pickups, suspensions, and expulsions has steadily increased.

Approximately 30% of school education calls to ACD's Support Line involved a child experiencing gatekeeping or exclusionary discipline between 2019 and 2023.

Gatekeeping and exclusionary discipline have devastating impacts on students and families. Families speak about their children's access to education being disrupted, their children feeling disconnected from peers, and having a hard time transitioning back to school. For families, it creates emotional and financial pressure, often meaning mothers in particular have to reduce or stop their paid employment.

The DRC highlighted more needs to be done to prevent gatekeeping and exclusionary discipline against students with disability. ACD's analysis of the current practice in Victoria when compared with the DRC recommendations found implementing a suite of recommendations across three broad areas will give students with disability and their families better protection against gatekeeping and exclusionary discipline. These areas are:

1. More support for students with disability and their families
2. Additional legislative and regulatory safeguards
3. Better monitoring and public reporting.

Recommendations

Give students with disability and their families more support

1. Proactively give students and families information about their rights at the start of each school year.
2. Establish an independent review process to enable students or families to challenge an enrolment refusal, raise concerns or lodge a complaint about enrolment in any school.
3. Introduce an independent case management process to support students and families in all registered schools who have been subject to exclusionary discipline.
4. Ensure students and families can access an independent case manager or independent advocate to any meeting that relates to a student's suspension or expulsion.
5. Refer students with disability and their families to student or family-focused disability advocacy organisations for additional support.
6. Increase investment in disability advocacy organisations to give students and families access to the support they need.

Introduce additional legislative and regulatory safeguards

7. Maintain a central record of decisions on enrolment refusal or cancellation, including informal refusals, and reasons why students with disability change their enrolment (for example from mainstream to specialist school).
8. Restrict sensitive health information schools can gather before a student's enrolment has been confirmed.
9. Restrict the use of exclusionary discipline against students with disability as an option of last resort to avert the risk of serious harm to the student, other students, or staff in all registered schools. Exclusionary discipline includes reduced timetables, early pickups, informal suspensions and expulsions and formal suspensions and expulsions.
10. Require (and resource) all registered schools to implement individual behaviour support plans and reasonable adjustments, in consultation with the student and their family, prior to any incident of exclusionary discipline.
11. Require registered schools to demonstrate their enrolment and exclusionary discipline policies and practices comply with anti-discrimination legislation.
12. Ensure all students with disability, regardless of level of adjustment they receive and which education setting they attend, have access to strengthened oversight when subject to exclusionary discipline (for example, by expanding current processes for students receiving substantial or extensive adjustments in government schools when faced with expulsion).

Increase monitoring and public reporting

13. Monitor and publicly report against enrolment decisions for students with disability across government and non-government schools.
14. Monitor and publicly report against the use of exclusionary discipline against students with disability across all registered schools, including whether a behaviour support plan and/or reasonable adjustments were in place. Ensure data is disaggregated to understanding existing and emerging trends.
15. Develop and introduce a process to address high rates of gatekeeping and/or exclusionary discipline in identified schools.

1. Give students with disability and their families more support

Students with disability and their families should have access to more information to understand gatekeeping and exclusionary discipline, and more support to seek advice and support if things start to go wrong.

For many families, their child's experience of gatekeeping and exclusionary discipline is informal. This means that incidents aren't always documented and recorded and formal processes aren't always followed, which can result in fewer protections and oversight.

Families raising children with disability have shared experiences of:

- being discouraged from enrolling their child on the basis that the school doesn't have the resources or expertise to support their child
- feeling unwelcome by the school after being told their child would be better attending elsewhere, or that the school isn't the right 'fit'
- being actively encouraged to enrol their child in a specialist school or to seek dual enrolment when families are enquiring about enrolment in a mainstream school
- actively being discouraged from continuing enrolment at their child's school or being told their child must repeat a year to maintain enrolment at the school
- having their child's attendance at off-site allied health appointments marked as unallowable absences (even where these services are part of a school-developed plan such as an individual education plan or behaviour support plan) and the school using the number of unallowable absences to review the student's enrolment
- encouraging their child to attend an alternate education setting to complete their senior secondary schooling.

23% of calls to ACD's Support Line about gatekeeping involved mainstream schools explicitly encouraging a family to enrol their child in a special school between 2019 and 2023.

Giving students with disability and their families more support to raise concerns and help resolve issues around gatekeeping and exclusionary discipline will mean better outcomes for students by supporting them to stay engaged in school.

CASE STUDY: Gatekeeping

Sarah's son has a disability and is about to finish primary school. She is nervous about the transition to high school because she had poor experiences when enrolling her son in kindergarten and again in primary school.

Sarah attends an open day at a high school in her local area. When Sarah talks with school staff about her son's needs, Sarah is told her son would be better off attending elsewhere because they don't have the expertise to support him at their school. They suggest the closest specialist school instead.

Sarah is devastated and feels like her son is not welcome. She has not made a formal enrolment application so she does not receive a formal enrolment refusal. Sarah knows the school shouldn't have discouraged her son from attending but is too upset to look into ways of holding the school accountable.

2. Introduce additional legislative and regulatory safeguards

Stronger safeguards to reduce gatekeeping and exclusionary discipline are needed to give students with disability more protections in government and non-government schools. Current gaps in legislation and regulation mean schools continue to informally and formally exclude students with disability at high rates. Gaps include:

- No mechanism to capture the true rate of gatekeeping and exclusionary discipline across all schools
- No restrictions on using reduced attendance as a disciplinary measure, and no requirements to increase the student's attendance when reduced attendance is used
- Insufficient requirements to ensure students with disability are receiving the right support before exclusionary discipline is used
- Differences between disability discrimination legislation and what happens in practice.

20% of school education calls to ACD's Support Line in Term 1 2024 involved a child being put on reduced school attendance.

Exclusion can look different for every child. Families report experiences of:

- their child being put on reduced attendance with no plan to increase time spent at school or in the classroom learning
- their child's absence being marked as 'parent choice' when the school calls and requires families to pick up their child early
- their child being told they can only attend school for the hours they receive funding for education support staff
- schools calling to encourage or request them to pick up their child early – including for children who have been put on a reduced timetable
- their child being told to stay home from school for a number of days for their benefit
- students being expelled without reasonable adjustments, behaviour support plans or individual education plans in place
- limited collaboration between the family, student and school including no Student Support Group meetings taking place before, during and after an incident of exclusionary discipline
- education support not being provided during or after multiple suspensions (formal and informal) including return to school plans
- non-government schools including in their Terms of Business that families must meet funding gaps for their child to access reasonable adjustments to maintain enrolment at the school
- non-government schools requiring families to provide sensitive health information prior to finalising enrolment, and withdrawing offers of enrolment after providing the school with the child's disability diagnosis.
- feeling there are limited avenues to address and resolve over-use of exclusionary discipline, particularly around reduced timetables.

'There is always pressure to be part-time.'

'At one stage [my child] was allowed 45 minutes at school per day.'

CASE STUDY: Informal exclusionary discipline

Noah is a prep student with disability at a mainstream school who has been put on a reduced timetable. Noah only attends school for three hours per day. During those three hours at school, Noah isn't always given the right reasonable adjustment to support him to engage with the class content. Student Support Group meetings don't take place regularly, and Noah's parents feel there isn't a lot of collaboration taking place to support Noah to attend school. For example, there is no plan to increase Noah's school attendance up from three hours per day.

Occasionally, Noah's mum receives a call from the school encouraging her to pick up Noah early, because it would be in 'Noah's best interest as he's feeling overwhelmed'. Noah's mum feels like she has to leave work early to pick up Noah even though Noah is only attending school for three hours per day. Sometimes when Noah's mum gets a call like this, the school will let her know it would be best for Noah to stay home the next day.

The school does not record in their internal systems that they have requested Noah's mum to pick up Noah or that they have asked Noah to stay home next week, and instead it is recorded as parent choice. Because this is not recorded correctly, the proper processes around suspensions aren't followed and Noah isn't given access to educational materials or support while he is at home. The school doesn't schedule a Student Support Group meeting to put a plan in place to develop a return to school plan or talk about whether Noah is receiving the right reasonable adjustments.

Because there are no formal guidelines around reduced attendance and the informal suspension hasn't been recorded in the system, Noah's parents have limited avenues to appeal the school's decision.

Noah's mum contacts ACD and gets support to understand Noah's rights and to talk about how they can work collaboratively with the school to increase Noah's school attendance and prevent informal suspensions.

ACD attends two meetings with Noah's mum and the school, where the school agree to implement reasonable adjustments to help Noah in the classroom. They discuss that it would be helpful to develop and implement a Behaviour Support Plan and an Individual Education Plan for Noah. The school talks with Noah's and the school's allied health professionals to support this planning.

Noah is now attending school full-time. School staff have a better understanding of how to support Noah. Noah's mum feels like the relationship between her and the school has improved and they are creating a more inclusive environment for Noah.

3. Increase monitoring and public reporting

Victoria doesn't have a system-wide picture on the rate of gatekeeping or exclusionary discipline against students with disability. Without capturing the right information and implementing stronger public reporting requirements, Victoria will miss opportunities to identify and address system-wide issues that can reduce gatekeeping and exclusionary discipline and improve outcomes for students.

Families are concerned about the lack of visibility about gatekeeping and exclusionary discipline and want increased transparency to support their confidence that students with disability are being supported to engage in school.

For example, data from ACD's Support Line shows concerning trends about informal exclusionary discipline for prep and grade one students with disability. By addressing data gaps across the entire education system, Victoria will have a more comprehensive picture about existing and emerging issues.

In Term 1 2024, more than 20% of calls with reduced school attendance to ACD's Support Line were for children aged between 5 and 7 years old.

The Department of Education collects some expulsions data. For example, in 2019, only 4.4% of government school students received funding from the Program for Students with Disabilities, but they represented 14% of expulsions.

In 2022, 29.5% of students expelled from government schools were students receiving a 'substantial' or 'extensive' adjustment under the Nationally Consistent Collection of Data (NCCD).¹ Students with disability who receive lower levels of adjustment under the NCCD are not captured in Victorian government school expulsion statistics for students with disability.

There is no public data on expulsions of students with disability in non-government schools.

'It's the attitude and lack of accountability. When we were driven out of that school, there should be somebody who at least asks the parents, why did you leave? ... It will help the education department to address what is not working.'

¹ The Department of Education changed the way they report expulsion of students with disability in 2022. As the Program for Students with Disability only supported students with higher support needs, it is likely there is some comparable cross over from students receiving PSD funding and students receiving substantial or extensive adjustments under the NCCD. In both cases, the expulsion numbers will not include students with disability receiving lower levels of adjustments, meaning the rate of expulsion among students with disability is likely higher.