



Victorian Equal Opportunity  
& Human Rights Commission

# Submission to the Inquiry into School Devolution and Accountability

November 2013

# 1. Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) welcomes the opportunity to make a submission on the *Inquiry into School Devolution and Accountability*, conducted by the Victorian Competition and Efficiency Commission.

The Commission is an independent statutory body that administers the *Equal Opportunity Act 2010* and the *Racial and Religious Tolerance Act 2001*. Functions undertaken by the Commission include: conciliating individual and representative complaints about discrimination, sexual harassment; racial and religious vilification; providing education about human rights, equality of opportunity, racial and religious tolerance; undertaking projects and activities aimed at eliminating discrimination and racial and religious intolerance, conducting research and providing legal and policy advice.

In addition, the Commission undertakes specific functions in relation to the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). These include providing an independent assessment of how well State and local Government comply with the Charter, and researching particular human rights issues and concerns.

## 1.1 The Commissions' interest in these issues

There are nearly 542,000 students in Victorian government schools.<sup>1</sup> The Department of Education and Early Childhood Development (DEECD) estimates that 20 per cent of these students have difficulties learning.<sup>2</sup> Disability can be one of the factors contributing to this.

In common with other states, within this group of students, there is a subset who are eligible for individual targeted funding. In Victoria, this funding is called the Program for Students with Disabilities (PSD). In 2011, 20,883 students received PSD funding. That is around 3.9 per cent of the government school population.<sup>3</sup>

Indigenous students are over-represented in the PSD population, with 3.6 per cent of PSD eligible students being Indigenous, compared to 1.6 per cent of the Victorian school population being Indigenous.<sup>4</sup>

Under state and federal anti-discrimination laws, Victorian schools have a legal requirement to ensure that students with disabilities can participate in education on the same basis as other students. The Equal Opportunity Act not only makes it unlawful to discriminate against a student based on their disability, it also creates a positive duty for schools to take reasonable steps to eliminate discrimination as much as possible.<sup>5</sup> This means that all Victorian schools and staff must be proactive to prevent discrimination. Government schools also have specific obligations under the Charter.

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<sup>1</sup> State of Victoria, Department of Education and Early Childhood Development, *Summary Statistics for Victorian Schools* (March 2012).

<<http://www.education.vic.gov.au/about/publications/newsinfo/factsandfigures.htm>> at 28 June 2012.

<sup>2</sup> <[http://www.audit.vic.gov.au/audits\\_in\\_progress/audits\\_details.aspx#learning](http://www.audit.vic.gov.au/audits_in_progress/audits_details.aspx#learning)> at 5 July 2012.

<sup>3</sup> Department of Education and Early Childhood Development, 'Summary Statistics for Victorian Schools (March 2012)', above n 1.

<sup>4</sup> That is 3.6 per cent of the 3.9 per cent of all government school students who are eligible for this funding. Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD 13 August 2012.

<sup>5</sup> *Equal Opportunity Act 2010* s 15.

In addition, the *Disability Standards for Education 2005* (the Standards) clarify the obligations under the federal *Disability Discrimination Act 1992* and provide guidance on five areas: enrolment; participation; curriculum development, accreditation and delivery; student support services; and the elimination of harassment and victimisation. All schools are bound by these Standards.

However, evidence suggests that these rights are not always fully realised in Australia. For example, according to 2009 data, people with disabilities are less likely to have completed Year 12 and are less likely to hold a post-school qualification.<sup>6</sup> Twenty-six per cent of people with a disability do not go beyond Year 10, compared to 18 per cent of students without disability.<sup>7</sup>

## **1.2 Evidence regarding the experiences of disabilities in Victorian schools**

The Commission recently finalised research examining the experiences of students with disabilities in Victorian schools. I attach a copy of the report of that research entitled *Held back* for your information.

The report documents the experiences of over 1800 parents, students and educators who took part in the research by way of on-line surveys, a telephone call in and 'have a say' day consultations held throughout Victoria. Further information was collected through key informant interviews with the DEECD and other major stakeholders. Written submissions were also received from organisations.

### **Main findings of report**

Our research found that the culture and resources of individual schools, as well as the skills and attitudes of the principal and teachers, are key factors in building a school that is supportive of students with disabilities and meets legal obligations under anti discrimination and human rights legislation. We found that while many individual schools and teachers are working successfully to build inclusive school communities, this good work is not consistent across Victoria.

In common with the findings of Victorian Auditor-General's recent review - *Programs for Students with Special Learning Needs*, the Commission found that DEECD has developed many valuable programs, policies, guidance and curriculum supports – these have the capacity to make an enormous difference, however, these are applied inconsistently by schools and are not effectively monitored by the Department.<sup>8</sup> It appears that there is no system in place to ensure that these requirements are always met or that students with disabilities are making progress towards their educational goals.

As a result, students' experiences depend on which school you go to, which teacher you have and the knowledge and attitudes of your school towards disabilities. This is a hit and miss approach to ensuring one of the most important human rights and the foundation for a good life - a decent education.

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<sup>6</sup> Australian Bureau of Statistics, *Disability, Australia, 2009* cat. no. 4446.0.

<sup>7</sup> Australian Bureau of Statistics 2010, *Survey of education training and experience 2009: state and territory Australian tables*, 'Table 8: Persons aged 15–64 years, selected characteristics – by level of highest educational attainment, Victoria', cat. no. 6278.0.55, ABS, Canberra, cited in State of Victoria, *Draft Disability Plan 2013–2016* (2012) 13.

<sup>8</sup> State of Victoria, Victorian Auditor-General's Office, *Programs for Students with Special Learning Needs* (2012).

The Commission notes the recently released *Towards Victoria as a Learning Community* and associated draft compact. The Commission will be making separate submissions to the Victorian Government on these documents, however in summary we note that our concerns regarding devolution and accountability for outcomes for students with disabilities are not clearly addressed by those documents.

### **1.3 Structure of submission**

This submission, based on the findings of the *Held Back* research considers the human rights implications of increasing devolution of schools in Victoria. It focuses primarily on students with disabilities; however, the principles discussed apply equally to other attribute groups under the Equal Opportunity Act, including Aboriginal students.

It is structured according to the questions in the Issues Paper. It identifies a series of unintended consequences that may flow from a highly devolved model of system accountability where these may have a discriminatory effect and/or are contrary to the best interests of children and young people.

Finally, we make recommendations to deliver a more rights consistent approach to devolution, utilising existing systems and accountability tools so as to avoid an additional administrative burden on schools, while maximising accountability for the educational outcomes of students with disabilities, or otherwise disadvantaged students.

## **2. Issues**

### **2.1 Government policy objectives and principles**

**What are the outcomes that school devolution and accountability are means for achieving?**

The outcomes of school devolution should be to maximise the educational experiences for all students, including those with disability so that they may achieve the best possible educational outcomes.

**How does autonomy and accountability affect school performance? What is the evidence of links between school autonomy and accountability, and school (student) performance?**

Unfortunately, there is no means to reliably determine how autonomy is affecting school performance for students with disabilities in Victoria, as there currently is no system-wide means for determining the educational outcomes of these students. This data simply does not exist. Instead, all the information is held at a school level, usually in the student's Individual Learning Plan (where these are in place).

**What are the advantages and disadvantages of greater school autonomy and accountability?**

Internationally there are significant differences in how devolution operates but 'there is general consensus among advocates of such initiatives that they will improve school effectiveness and student learning outcomes by producing better educational decision making; improving school management and leadership; improving quality of

teaching; leading to a more responsive curriculum; and producing more efficient use of resources'.<sup>9</sup>

One of the consistent themes in the *Held Back* research was the challenges our government school system currently faces in striking an appropriate balance between devolution and accountability. The Commission recognises the advantages of local decision making by schools. However, it does create challenges when system-wide change is needed to ensure the full inclusion of students with disabilities, especially in a climate of limited resources and competing demands.

Localised accountability is more challenging when so much rests on the quality of educators who are not always trained in the pedagogic and practice changes necessary to teach to the full range of disabilities that may be present in a classroom. It also risks masking school cultures where discrimination is tolerated and parents feel powerless to 'take on the principal' by bringing a complaint.

Our research found that in the Victorian education system, there is a heavy reliance on individuals making complaints as a means of ensuring accountability. Consistent with devolution principles complaints are primarily resolved at the school level. While there are advantages to this, it also lacks independence as it allows the respondent to the complaint – the school – to be the primary decision maker about whether a complaint is substantiated.

One third of parents in our survey who felt their child had been discriminated against did not complain because they did not think it would make any difference. One in five did not complain because they were fearful of repercussions for themselves or their child.

DEECD does not systematically monitor complaints made to schools. As such, there is no available data on how many complaints are made, what they are about or how they have been resolved. Further, while each school must have a complaints policy, there is no single, consistent policy for handling complaints across schools in Victoria and no clear systems in place to monitor the fairness and accountability of complaints processes at a school level.

Our research suggests that devolution is not currently serving students with disability well, as evidenced by the significant variation between experiences of students with disability between schools. This does not mean that devolution should be abandoned as a principle, but rather that the correct balance with accountability needs to be struck, for example by enhancing existing accountability mechanisms to have stronger focus on performance around disability and shifting the emphasis away from parents having to do all the heavy lifting by bringing individual complaints.

**What is the current split of responsibilities in Victoria between the central education bureaucracy including its regional offices, and government schools across all areas? How does the current split of responsibilities impact on school (student) performance?**

While accountable to DEECD, governance of schools primarily rests with the principal working with the school council.<sup>10</sup> Decisions regarding reasonable adjustments for students with disabilities are made at the school level.<sup>11</sup> It is also the

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<sup>9</sup> Australian Education Union, Australian Education Union, *Devolution and Education* (2012) 2.

<sup>10</sup> Details of the objectives, functions, powers and duties of a school council are set out in sections 2.3.4 to 2.3.32 of the *Education and Training Reform Act 2006*. See also *Education and Training Reform Regulations 2007*.

<sup>11</sup> However, if a complaint of discrimination is made against the school, the DEECD will also be a respondent to the complaint. This is because the DEECD is an education authority.

school principal on behalf of the student support group, who makes the application for PSD funding and, if successful, determines how the funding will be spent. Schools are responsible for establishing a student support group for all students funded under the PSD and are 'strongly encouraged to establish this for any student with additional needs'.<sup>12</sup> They are also responsible for developing and implementing an Individual Learning Plan for each student eligible for PSD funding.<sup>13</sup>

Decisions regarding the use of integration aides, student support staff, equipment and assistive devices, physical environment, access to extracurricular activities and other adjustments are all made at the school level.

Government schools are expected to follow DEECD guidelines and policies. They are supported by their DEECD regional office and DEECD central groups to do so; however, the implementation of most policy and procedure can be determined by the school. This is consistent with the DEECD ethos of local decision making by schools.

The major policies and guidelines relating to students with disabilities are set out below:

- The *Program for Students with Disabilities Guidelines* sets out the eligibility criteria for this funding program and includes the procedures that schools must follow when making an application or appeal regarding PSD funding. These guidelines also set mandatory requirements for the program.<sup>14</sup>
- The PSD guidelines are complemented by the *Student Support Group Guidelines*, which provide guidance to schools on how to establish and run a Student Support Group. They also describe how to develop and implement an individual learning plan.<sup>15</sup>
- The *Effective Schools and Engaging Schools: Student Engagement Policy Guidelines* cover a wide range of policies that seek to maximise student engagement with school.<sup>16</sup> They also contain the policies and procedures relating to suspension and expulsions from government schools.
- The *Restraint of Student Policy* forms part of the *School Policy and Advisory Guide* and deals specifically with physical restraint of students.<sup>17</sup>
- The *Addressing parents' concerns and complaints effectively policy and guides* require all government schools to develop a complaints policy and provide guidance on how that policy should operate.<sup>18</sup> The policy explains that

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<sup>12</sup> State of Victoria, Department of Education and Early Childhood Development, *Program for Students with Disabilities Guidelines 2013* (2012) 9. <

[www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf)> at 31 July 2012.

<sup>13</sup> All Aboriginal students must have an Individual Learning Plan.

<sup>14</sup> State of Victoria, Department of Education and Early Childhood Development, *Program for Students with Disabilities Guidelines 2013* (2012). <

[www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-PSDGuidelines.pdf)> at 31 July 2012.

<sup>15</sup> State of Victoria, Department of Education and Early Childhood Development, *Student Support Group Guidelines 2013* (2012). <[www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-SSGGuidelines.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/2013-SSGGuidelines.pdf)> at 31 July 2012.

<sup>16</sup> State of Victoria, Department of Education and Early Childhood Development, *Effective schools are engaging schools: Student engagement policy guidelines*, 2009.<

<http://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/segpolicy.pdf>> at 31 July 2012.

<sup>17</sup> State of Victoria, Department of Education and Early Childhood Development, *School policy and advisory guide: safety response- restraint*.

<[www.education.vic.gov.au/management/governance/spag/governance/safetyresponse/studentrestraint.htm](http://www.education.vic.gov.au/management/governance/spag/governance/safetyresponse/studentrestraint.htm)> at 29 June 2012.

<sup>18</sup> State of Victoria, Department of Education and Early Childhood Development, *Addressing parents' concerns and complaints effectively* (2009).

<[www.eduweb.vic.gov.au/policy\\_and\\_guides/Addressing\\_parents\\_concerns.pdf](http://www.eduweb.vic.gov.au/policy_and_guides/Addressing_parents_concerns.pdf)> at 31 July 2012.

complaints are expected to be dealt with by schools in the first instance before they can be escalated to the regional office or the DEECD deputy secretary.

- The *Accountability and Improvement Framework for Victorian Government Schools* sets out three outcomes that government schools strive to achieve; that is, 'improved student learning, enhanced student engagement and wellbeing, and successful transitions and pathways'.<sup>19</sup>

The Commission is concerned that existing accountability measures lack specificity in terms of ensuring the equal participation of students with disabilities in all aspects of their education as required by law.

#### *School audits*

For example, five yearly reviews as required by the Victorian Registration and Qualifications Authority (VRQA) under the *Education and Training Reform Act 2006*, do not necessarily check that policy and guidance on educating students with disabilities is being followed; however we understand Student Wellbeing and Engagement Division of DEECD does provide advice to inform the review process in government schools.<sup>20</sup> How this translates into practice is less than clear.

#### *School performance data systems*

Further, while DEECD requires each school principal to submit a report on the number of PSD students at their school, how many do not have an individual learning plan and the percentage of students the principal considers are meeting goals within these plans via the School Census, this is all self-reported data – there is no independent analysis or input. As such, it is a very rudimentary measure of performance.

DEECD also provides schools with a School Compliance Checklist, a 'one-stop' online self-assessment tool designed to assist them manage and monitor their compliance with legislation and department policy and to streamline and consolidate reporting requirements. Again, this is not independently verified<sup>21</sup>

#### *Publication of school results to the community*

The Commission notes and welcomes that every government school is required to publish an annual report and make this available to parents. Government schools with more than 10 students eligible for PSD funding must report on progress of these students on their annual report to the community.<sup>22</sup> In addition, a Government School Performance Summary for each school is published on the website of the VRQA. This performance summary does not necessarily contain any information about how well students with disabilities are doing at the school or what efforts the school is making to ensure compliance with the Equal Opportunity Act, the Charter or the Disability Standards for Education.

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<sup>19</sup> State of Victoria, Department of Education and Early Childhood Development, *Accountability and Improvement Framework for Victorian Government Schools 2012* (2012).  
<[www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/aifguidelines3.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/aifguidelines3.pdf)> at 31 July 2012. See also State of Victoria, Department of Education and Early Childhood Development, *School Review Guidelines* (2012).  
<[www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/srguidelines4.pdf](http://www.eduweb.vic.gov.au/edulibrary/public/account/operate/saif2011/srguidelines4.pdf)> at 31 July 2012.

<sup>20</sup> Information provided to the Commission by Student Wellbeing and Engagement Division, DEECD, 9 August 2012.

<sup>21</sup> <<http://www.education.vic.gov.au/management/schoolimprovement/checklist.htm>> at 10 July 2012.

<sup>22</sup> State of Victoria, Department of Education and Early Childhood Development, *Guidelines for the 2011 Annual Report to the School Community 2012* (2012) 5.



### *Key performance indicators for school principals*

Under the *Accountability and Improvement Framework*, each school must have a strategic plan, which includes goals and targets for the school to measure its achievements against. Each school must have an annual plan. Underneath this sits the principal's performance and development plan and individual performance development plans for school staff.<sup>23</sup>

The Commission was not able to verify if any schools currently include disability inclusion related performance measures in their principal's Performance and Development Plan, however, we note that the departmental *Guidelines for Principal Class Performance and Development* are silent on disability.<sup>24</sup>

This represents a significant lost opportunity to embed accountability at the school level by encouraging every principal, in every school to prioritise inclusion of students with disabilities.<sup>25</sup>

### **What principles of good governance should apply to a devolved school system to promote optimal educational outcomes?**

The fundamental principle of good governance must be that the law is followed. Unfortunately, our research suggests that discrimination is occurring in Victorian schools. As well as the negative impacts this has on the individual student it also creates significant risk for government.

It is important that DEECD and schools recognise that they are both bound by the Equal Opportunity Act if discrimination occurs, regardless of how devolved our education system becomes.

Disturbingly, 40 per cent of educators who took part in the *Held Back* survey were not aware of their legal obligations to students with disabilities under the Disability Standards for Education. Twelve per cent of principals did not know the Standards existed.

It is a matter of significant concern that if the correct balance between autonomy and accountability is not struck that the Department will have to defend claims of discrimination simply because school principals did not follow DEECD policy or did not know their legal obligations under equal opportunity laws. The risk of this increases if schools assume that oversight on these issues is not in place from regional or central offices of DEECD.

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<sup>23</sup> Ibid 7–8.

<sup>24</sup> See <[www.education.vic.gov.au/proflearning/schoolleadership/principalpd.htm](http://www.education.vic.gov.au/proflearning/schoolleadership/principalpd.htm)> at 9 August 2012. The Commission notes that legal compliance information has now been incorporated into the principal's induction toolkit, including the *Disability Discrimination Act 1992* and *Disability Standards for Education 2005*.

<sup>25</sup> In addition, departmental policy relating to the appointment of independent reviewers and critical friends for school reviews under the Accountability and Improvement Framework does not mention including those with specialist knowledge of disability when appointing reviewers.



## **2.2 The impact of school autonomy and accountability on educational performance**

### **How does the autonomy and accountability (or limited autonomy and accountability) of Victoria's current government school system affect the performance of students and schools, particularly for disadvantaged students?**

The Commission notes and supports the policy objectives of devolution, however we are concerned that the outcomes for students with disabilities are currently compromised by a lack of performance measures for to determine how students with disability are faring, accountability for public funds administered under the PSD and compliance with legal obligations under equal opportunity legislation.

The Commission notes the significant efforts made by the central office of DEECD and the work of regional disability coordinators to support schools in delivering a quality education to students with disability. However, our research indicates that while DEECD has policies, guidelines and support in place for the government school system to meet the needs of students with disabilities:

- DEECD does not know if these work, as there appears to be no means to assess the results of these interventions/approaches or to measure the educational progress of students with disabilities
- DEECD does not know if these interventions/approaches are being implemented in all schools, as this data is not collected
- DEECD has clear policies in place under the PSD scheme, where schools are required to establish a student support group and prepare an individual learning plan for each PSD-funded student. However, implementation of PSD requirements can vary from school to school and there is no system in place to ensure that these requirements are always met.
- DEECD does not know how schools are performing in relation to inclusion and non-discrimination, as there is no feedback mechanism to engage schools or parents at a system level.

### **What examples demonstrate how school autonomy and accountability (or a lack of these) have affected students, particularly disadvantaged students?**

Our study found that too many Victorian schools, both mainstream and specialist, are failing to provide the services and support that students with disabilities need for a decent education. While this is not solely driven by a devolved governance model it is of concern that:

- half of the students and parents in our survey reported discrimination at school. One in four educators had witnessed discrimination. Students with disabilities living in rural and regional Victoria experienced particular disadvantage in accessing the necessary support to participate fully at school. Barriers to participation are amplified for Indigenous students and those from culturally and linguistically diverse backgrounds.
- Fifty-three per cent of parents reported that their child was not able to fully participate in education; however, educators took a more positive view. Seventy-two per cent of educators said that students with disabilities could fully participate, while 87 per cent of principals reported full participation. This suggests significant variations in perceptions of equality in Victorian schools between local decision makers (school principals) and consumers (parents).

- when parents asked for adjustments to be made to facilitate their child's participation, 32 per cent said the adjustment was made in full. Fifty-eight per cent said adjustments were partially made and ten per cent said necessary adjustments were not made at all despite reasonable adjustments being the legal standard that all schools must meet.

The Commission is deeply concerned that some students with disabilities may only attend school on a part-time basis (for the hours an integration aide is funded), and that some parents are using their financial resources to provide specialist supports in schools to address gaps in the system. Under the Education and Training Reform Act and DEECD policy, neither situation should be allowed to happen.

During the course of our research, a number of parents and students also spoke about:

- being explicitly refused enrolment in a school or, more often, being subtly informed that the school would not be able to accommodate the student's needs
- being denied participation in external assessments, such as NAPLAN, or not receiving the necessary adjustments to participate fully in exams and assessments, especially the Victorian Certificate of Education
- being denied equal access to attend excursions, school camps or other extracurricular activities
- sustained bullying and harassment of students with disabilities. The problem appears to be widespread, with almost two-thirds of students and parents who responded to the survey reporting that they or their child had been bullied at school. This is three times the rate of bullying for the general student population.
- discriminatory attitudes expressed by a small number of teachers
- use of restrictive interventions (restraint and seclusion) in schools, contrary to DEECD policy and obligations under the Charter and Equal Opportunity Act.

Thirty-four parents reported the use of restraint on their child at school and 128 parents reported that their child had been placed in 'special rooms'. It is important to note that although DEECD policy requires restraint to be reported, there is no legal requirement for a teacher or school in Victoria to report the use of restraint or seclusion of a student. This means that there is no reliable data on how frequently these practices occur, why they are used or the impact they have.

The Victorian Auditor-General came to a similar conclusion in his recent report which found that 'audited schools used a variety of practices to restrain and seclude students... but rarely had documented policies for their use'.<sup>26</sup>

Further, where decisions are made at a school level which are inconsistent with DEECD policy the absence of coherent reporting and accountability processes means there appears to be no way of the department knowing about, or ensuring that, decisions made at a school level do comply.

For example, The Commission is aware that a number of schools have made applications to the Victorian Civil and Administrative Tribunal (VCAT) for exemptions from the Equal Opportunity Act, in order to employ male integration aides to work with and restrain students with disability who may display challenging behaviours. It is unclear how aware of, or how much input the central office of DEECD had in regards to these applications. When such an application is contemplated, given the risks associated with the use of physical restraint and the department policies on the use of restraint, a high degree of departmental oversight should be the norm. In

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<sup>26</sup> Victorian Auditor-General's Office, above n 8, 27.

current practice however, it appears that this largely depends on school principals notifying the Department of their intentions to lodge such applications.

We are also aware that the Department has no control over which training providers schools use in the area of use of restraint and seclusion. In our survey, three in four educators at specialist schools had physically restrained a student. Of these, one-third felt they did not have adequate training to manage the situation. Several survey respondents reported taking part in a martial arts therapy program, which introduced various types of self-protection and 'methods of restraining students without injuring them', as well as non-physical behavioural correction techniques.

Nor is there any independent oversight of the use of restraint and seclusion in schools. Adults using disability services enjoy the independent oversight of the Office of the Senior Practitioner when restrictive interventions are contemplated or used, yet children in our schools do not.

In addition, we are also concerned that DEECD does not know how many students with disabilities have been suspended or expelled from schools. Information about suspension and expulsion of students with disabilities is therefore not reported by DEECD. This makes it difficult to understand and fix the problem. However, our survey suggests that some students with disabilities are suspended multiple times or expelled, nearly always in connection with behaviour-related issues. These students are likely to end up home schooled, in distance education or out of education all together.

We are particularly concerned that the draft compact (published to accompany *Towards Victoria as a Learning Community*) suggests further devolution of disciplinary matters to school principals in the absence of publically available data and stringent oversight around issues such as the use of restrictive interventions, suspension and exclusion of students when these are so closely tied to the educational futures for students with disability, or otherwise disadvantaged students.

**What areas of legislation, regulation, guidelines, funding arrangements, common practices and other processes limit school, principal and teacher autonomy and accountability?**

For many who took part in our research, a fundamental concern was that virtually all accountability for delivering positive educational outcomes for students with disability rests at the school level.

For example, in Victoria there is a heavy reliance on Individual Learning Plans to identify goals for the student and to track their progress towards these goals. Currently, the execution and evaluation of these plans rests solely in the hands of the school; there is no review for compliance by peers, the region or DEECD.

This would not be a problem if every student who should have an Individual Learning Plan did have one. In our survey three quarters of students with disability who were required to have an Individual Learning Plan under funding rules had one, leaving one in four without a plan, or not knowing if they had one. Further, our research, and that of the Victorian Auditor-General has found that quality of Individual Learning Plans (and student support groups) vary widely.<sup>27</sup> Despite this, there is currently no random checking of a sample of plans by DEECD regions as a means of ensuring consistency and quality control.

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<sup>27</sup> Victorian Auditor-General's Office, above n 8, 26-27.

It is important to note that PSD funding is not given to the individual student. Instead, it goes to the school as part of its student resource package. DEECD states that '[i]t is the responsibility of the school, in consultation with parents, to determine how the resources are used'.<sup>28</sup> However, our research found a very high level of frustration among parents who did not feel consulted and did not see how the funds allocated to support their child's participation were achieving this purpose. In the absence of clear reporting to parents and the DEECD many parents perceive that the current system lacks accountability for the manner in which funds are spent.

Nor is there any means to reliably measure whether the PSD funding program, which has an annual budget in the order of \$500 million, is delivering the best possible outcomes for students, because the program does not have reliable key performance indicators.<sup>29</sup>

As noted by the Victorian Auditor-General in 2007, the individualised and devolved characteristics of the program 'present a series of difficult challenges to develop appropriate central, or whole-of-program, accountability mechanisms, capable of reliably informing Parliament, and the community, on the aggregate effectiveness of the PSD'.<sup>30</sup> Now, some five years later, the program still does not have any published key performance indicators and the only tool to assess accountability for outcomes under the PSD remains the Individual Learning Plan at the school level with all the limitations described above.

Our research also indicated that there is a large number of students with disabilities who do not meet the criteria for PSD funding but who still require additional support and individualised teaching to maximise their educational outcomes.

While DEECD policy is that the needs of these students are to be addressed through the general school budget, and a range of other supports including the Language Support Program, student support services and the Abilities Based Learning and Education Support (ABLES) curriculum and teaching resource, this approach requires individual schools to accept these obligations. Our research and the findings of the Victorian Auditor-General confirm that individual schools are not always following this policy and there is no accountability mechanism in place to force their hand to accommodate the needs of students with disabilities who do not meet the (restricted) criteria for PSD funding.

A more comprehensive way to gather better information about the educational outcomes of all students, including those with disabilities would be to use the Victorian Student Number to record outcomes. However, this currently only provides information about where students are in the system. For example, it tracks which school a student attends and retention rates. It does not measure or report on educational outcomes for students.<sup>31</sup>

If the Victorian Student Number was enhanced to provide information about the participation and learning achievements of students with disabilities, it would, for the first time allow the DEECD and the community to know if the investments and techniques currently underway in Victorian schools to improve the participation of students with disabilities are actually working. It would also help to test the assertion that autonomy is functioning well and driving improvements.

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<sup>28</sup> <[www.education.vic.gov.au/management/srp/budget/ref015/psd1-6.htm](http://www.education.vic.gov.au/management/srp/budget/ref015/psd1-6.htm)> at 4 July 2012..

<sup>29</sup> Although there are financial audits of PSD funding at a school level, there does not appear to be a mechanism to ensure that this funding is being used to deliver appropriate adjustments for students with disabilities and, therefore, support the delivery of educational outcomes.

<sup>30</sup> Victorian Auditor-General, above n 8, 3.

<sup>31</sup> <http://vcaa.vic.edu.au/schooladmin/vsn/overview.html> at 9 August 2012.

Strengthening accountability could also be achieved by building in some basic monitoring by DEECD regions and by collecting baseline data at an aggregate level to assist such monitoring. These are detailed as recommendations at the end of this submission.

## **2.3 Options for devolution and accountability**

**How could existing accountability arrangements be modified or strengthened to support a more devolved government school system? Are some devolved responsibilities unduly burdensome for school councils and principals?**

**What arrangements are needed to ensure appropriate accountability and incentives for improvement in a more autonomous school system?**

The *Review of Disability Standards for Education 2005* found that nationally 'The obligations and requirements under the Standards are not backed up by strong accountability frameworks'.<sup>32</sup> Within this context, and given the variance in experiences of students with disabilities between schools it is unsurprising that a number of parents and educators participating in the Commission's research made suggestions about how accountability might be improved.

Some suggested establishing 'disability audits' of schools, alongside punitive measures for schools that failed to meet their legal obligations under anti-discrimination law, including the Standards. Some recommended funding bonuses for schools who met 'inclusion targets'. Others wanted specific targets and compliance measures around working with students with specific disabilities, including autism spectrum disorder.

Several mentioned increasing the role of regional DEECD staff to make sure departmental policies are followed. Others said there should be an independent oversight body because they did not consider DEECD to be proactive enough.

More common was a call for using existing accountability systems to include specific checks on how schools are performing in relation to students with disabilities. Many wanted to see key performance indicators for principals around educational outcomes of students with disabilities. For example, Autism Victoria has recommended that all principals be required to develop and implement 'an effective whole school inclusion program for students with a disability and this key performance indicator be directly linked to wage and bonus payments'.

Several educators suggested that existing inspections of schools, as required by VRQA, be recalibrated to include a stronger focus on deliverables for students with disabilities and as means of ensuring schools are following policy and guidance. The Commission notes that in other jurisdictions where a positive duty to eliminate discrimination, similar to that in Victoria operates, school inspection processes and guidelines have been altered to assist in the fulfilment of this legal obligation.

For example in England and Wales, the Office for Standards in Education, Children's Services and Skills (Ofsted) Principles of School Inspection require inspectors to evaluate the work of schools in eliminating discrimination, advancing equal opportunities and fostering good relations. Inspectors are also required to evaluate 'the extent to which schools provide an inclusive environment which meets the needs

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<sup>32</sup> Australian Government, Department of Education, Employment and Workplace Relations, *Report on the review of the Disability Standards for Education 2005* (2012) viii.

of all pupils, irrespective of age, disability, gender reassignment, race, religion or belief, sex, or sexual orientation'.<sup>33</sup>

Based on our research, the Commission has developed a suite of recommendations that we consider would strike the appropriate balance between autonomy and accountability, utilising existing monitoring mechanism and identified benchmarks.

## 4. Recommendations

- 1) Mindful of the recommendations of the *Report of the Review of Disability Standards for Education 2005*, that, as a matter of urgency, the Victorian Student Number is enhanced to enable the measurement of educational outcomes of students with disabilities in government schools.
- 2) Noting the findings of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that DEECD regional offices undertake a review of a random sample of individual learning plans (and Student Support Group records) to ensure these are of a satisfactory standard and are achieving educational outcomes for the student. Further, that the Victorian Registration and Qualifications Authority inspect a similar random sample as part of the cyclical review of Independent schools and require the same in government and Catholic school reviews.
- 3) Education authorities collect and annually publish aggregate data on the number of suspensions and expulsions of students with disabilities from schools.
- 4) All Victorian schools report on the number of suspensions and expulsions of students with disability as part of their cyclical review to maintain registration as a school.
- 5) Government schools submit data to the Student Wellbeing Division, Department of Education and Early Childhood Development on the number, type, frequency, length and reason for reduced attendance patterns of students with disabilities as part of the mid-year school census and that this information be published in aggregate form in the department's annual report. In the first instance, this could relate to students eligible for Program for Students with Disabilities funding, and thereafter all students with disabilities.
- 6) That the *Education and Training Reform Act 2006* and the *Disability Act 2006* be amended to provide that regulation of restrictive interventions in Victorian schools (including Catholic and Independent schools) be transferred to the jurisdiction of the Office of the Senior Practitioner, Department of Human Services
- 7) Noting that positive behaviour support is more effective, that schools report to the relevant education authority, the name and details of organisations providing training to school staff on behaviour management, including where such training includes use of restraint and seclusion. This information should include details on the training courses or modules proposed and delivered.

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<sup>33</sup> Office for Standards in Education, Children's Services and Skills, *Framework for School Inspection* (2012) 13. < <http://www.ofsted.gov.uk/resources/framework-for-school-inspection-september-2012-0> > at 30 November 2012. See also United Kingdom Equalities Office, *Public Sector duty guidance for schools in England* (2012) 15-17. < <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-guidance-downloads> > at 30 November 2012.

- 8) All government schools be required to submit data on the nature and type of complaints received each year, and that this aggregate data be published on a regional and state-wide basis.
- 9) Noting the findings and recommendations of the *Report of the Review of Disability Standards for Education 2005* and the Victorian Auditor-General's audit of programs for students with special learning needs, that the Department of Education and Early Childhood Development introduce key performance indicators for the Program for Students with Disabilities that are tied to educational outcomes. That these outcomes are measured in the first instance through a random audit of individual learning plans, and thereafter using an enhanced Victorian Student Number.
- 10) The *Program for Students with Disabilities Guidelines* require schools to provide a clear report to parents on how funding allocated to the school is being used to make reasonable adjustments for the student, and that this information be included in plain language in the student's individual learning plan agreed with the parent.
- 11) The Victorian Registration and Qualifications Authority examine the following in school registration reviews and inspections:
  - a) sample of individual learning plans and student support group minutes
  - b) data on educational outcomes for students with disabilities enrolled at the school
  - c) evidence of whole-of-school professional development on compliance with the anti-discrimination laws, including the positive duty to eliminate discrimination as far as possible and, in the case of government schools, the *Charter of Human Rights and Responsibilities Act 2006*
  - d) incident records regarding use of seclusion and restraint
  - e) complaint data.
- 12) The inclusion of key performance indicators on participation and outcomes for students with disabilities in all school principals' performance development plans.
- 13) The *School Review Guidelines* be amended to provide that where a government school has students with disabilities enrolled that the critical friends appointed to conduct a school review must include a person with expertise in relevant disabilities.