

Minister Bronwyn Pike

Department of Education & Early Childhood Development
2 Treasury Place
EAST MELBOURNE 3002

20 May 2009

Parent Advocates

Dear Minister Pike

I write to you as Manager of the Disability Discrimination Legal Service Incorporated ('DDLS'), on behalf of the Federation of Community Legal Centres.

DDLS is an independent community organisation that specialises in disability discrimination matters. It is a not for profit incorporated association that provides free legal service to people with disabilities. It also provides community legal education and undertakes law and policy reform projects in the areas of disability and discrimination.

A committee of volunteers manages the service. The DDLS Management Committee includes people with disabilities. Many people with disabilities, volunteers and students contribute their efforts to the work of the DDLS.

The DDLS works as an active member of the community legal sector and the disability advocacy sector.

The Federation of Community Legal Centres is the peak body for fifty one community legal centres ('CLCs') across Victoria. The Federation leads and supports its member centres to pursue social equity and to challenge injustice.

CLCs provide free legal advice, information and representation to more than 100,000 Victorians each year. CLCs' experience within their communities distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change. We are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

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We wish to express our serious concern about the new Department of Education & Early Childhood Development ('DEECD') guidelines contained in *Effective Schools are Engaging Schools*, in particular section 4.2.3 which prevents parent advocates from speaking at Student Support Group meetings held under the guidelines.

Student Support Group meetings are generally held for students who are disadvantaged in some way, mainly students with disabilities. Where planning or discipline for a child with a disability is the subject of conversation at a Student Support Group meeting, parents may wish an advocate not only to be present but also to speak. This may be because the parent is from another country. Even if that parent speaks English, they may feel uncomfortable expressing themselves in such a forum. In addition, parents who may require language assistance may not have made this known, and therefore may not benefit from being 'previously identified' as requiring that assistance.

Alternatively, the parent may have a disability themselves, or may generally lack confidence and require active support to participate. Other reasons for needing an advocate include parents being unaware of their own and their child's rights, and needing verbal assistance from someone familiar with the DEECD system.

Organisations such as Association for Children with A Disability, and other family advocacy agencies commonly provide an advocacy role in Student Support Group meetings, and have done so for many years.

The ban on parent advocates speaking means that students in these situations will not be able to have their best interests effectively communicated. Consequently students who have disabilities will suffer detriment.

We therefore believe that the new policy contravenes Victorian and Commonwealth legislation.

The policy is discriminatory

The new policy unfairly target students with disabilities. As previously noted, Student Support Group meetings are in the main held for students with disabilities. In relation to the document *Effective Schools are Engaging Schools*, the focus on behavioural problems also relates mainly to students with disabilities. It is well known that students with such disabilities as Attention Deficit Hyperactivity Disorder, Autism Spectrum Disorder, mental illness, Oppositional Defiance Disorder, and intellectual disability are often those students experiencing behavioural difficulties.

Through the prohibition on speaking by parent advocates, the policy imposes a condition on students with disabilities attending Student Support Group meetings, via limiting the ability of their parents to represent their best interests. This condition is not imposed on students without disabilities.

In this way, the policy appears to discriminate against students with disabilities, thereby contravening s 22(2) of the *Disability Discrimination Act 1992* (Cth), s 37(2) of the *Equal Opportunity Act 1995* (Vic), and s 8(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The policy also seems to contravene s 32 of the *Disability Discrimination Act 1992* in that it breaches the *Education Standards* in relation to the DEECD's obligations to consult with the student and their associate.

We also raise with concern the growing number of discrimination complaints and findings against the DEECD, and our understanding that the DEECD is not planning to implement the recommendations of the Victorian Civil & Administrative Tribunal in relation to the inadequacy, and need for urgent review, of DEECD's Program for Students with Disabilities. In our view this makes it even more important for parents of children with disabilities (and of children experiencing other disadvantage) to have an effective voice.

We hope that the DEECD will respond in a proactive way to findings of discrimination against it, and believe that measures such as the present restriction on parent advocates risk being interpreted as punitive by Victorian communities.

The policy is incompatible with other human rights

We believe that the policy contravenes other aspects of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), in terms of both human rights set out in the Charter itself and those human rights included in the ambit of the Charter (via ss 5 and 32(2)). Section 17 of the Charter iterates the right of families to protection, and s 17 of the Charter as well as the Preamble and Article 3 of the Convention on the Rights of the Child ('CRC') emphasise the right of children to protection.

The role of the parent in a Student Support Group meeting is to represent the child with a disability or disadvantage, and promote his or her best interests. Parent advocates assist parents to fulfil this role, and hence the prohibition on speaking by such advocates removes or reduces the protection for the child.

The DEECD also seems to be in breach of Article 18 of the CRC which requires States to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities. Article 23 of the CRC requires States to 'recognise the right of the disabled child to special care and . . . encourage and ensure the extension, subject to available resources, to the eligible child *and those responsible for his or her care*, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child (emphasis added).'

The new policy also appears to be incompatible with the right to freedom of expression under Article 13 of the CRC and s 15 of the Charter. For example, s 15(2)(e) of the Charter holds that:

‘Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether [. . .] (e) in another medium chosen by him or her.’

Article 12 of the CRC also provides that the child can freely express their view in all matters affecting him or her. Where the child may require an advocate to assist them to express their views, Article 12 could be breached if an effective advocate is not made available.

The Charter has been welcomed by Victorians for ensuring that their human rights are upheld. There is also extensive community interest in the current Commonwealth consultation on a national bill of human rights. It is our belief that Government must be the role model for such legislation.

Broader Policy Implications

Applying a broader perspective to the new guidelines, it is unfortunate that alongside addressing behavioural issues via the strategies of suspension and expulsion, there is no equivalent commitment to improving services for students with disabilities. The numbers of students with disabilities who are studying through Distance Education are testament to the failure of current school resourcing to support them adequately. While we recognise that there must be a strategy for dealing with problem school behaviour, we believe that any strategy that does not focus first on support, resourcing, teacher training and so on, is flawed.

We therefore ask that the policy be rescinded.

Sincerely

Julie Phillips
Manager, Disability Discrimination Legal Service Incorporated