

# **Victorian Department of Education and Training**

## **Education and Training Reform Regulations Review**

**Children and Young People with Disability Australia  
Submission – March 2017**

## INTRODUCTION

Children and Young People with Disability Australia (CYDA) welcomes the opportunity to provide feedback regarding the *Education and Training Reform Regulations Review*. This brief submission discusses key aspects of the proposed regulations that impact students with disability.

CYDA is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Australian Government Department of Social Services and is a not for profit organisation. CYDA has a national membership of 5300.

CYDA provides a link between the direct experiences of children and young people with disability to federal government and other key stakeholders. The organisation's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

## COMMENTS ON THE *EDUCATION AND TRAINING REFORM REGULATIONS 2017*

### Restraint

The proposed regulation 25 regarding "restraint from danger" states:

*A member of staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour that is dangerous to the member of staff, the student, or any other person.<sup>1</sup>*

This regulation is highly concerning and is seen to provide a justification for the use of both restraint and seclusion on students. CYDA is frequently informed of experiences of restraint and seclusion of students with disability in Victorian schools. Restraint has been defined as "a range of programs, procedures, and psychosocial techniques that can impede a person's exercise of choice and self-determination, all of which prevent people from being able to exercise human and legal rights that are ordinarily available to other members of the community."<sup>2</sup> Seclusion is "solitary confinement of a person in a room or area (e.g. garden) from which their exit is prevented by a barrier or another person. Seclusion involves situations in which people believe they cannot or should not leave an area without permission."<sup>3</sup>

CYDA undertakes an annual survey of the education experiences of students with disability. In 2016, 19% of Victorian respondents reported experiencing restraint at school and 20% reported experiencing seclusion. The following are direct experiences of students with disability in Victoria:

*Our son has been restrained in a chair that is bolted to a large piece of timber continuously throughout his day. He is only removed when taken to the toilet, where once again he is strapped to the toilet, or for outside play. While he is in class he is restrained at all times.*

*(My son was) physically sat on and restrained during a meltdown.*

<sup>1</sup> Victorian Department of Education and Training 2017, *Consultation Draft - Education and Training Reform Regulations 2017*, State of Victoria, Melbourne, p. 14.

<sup>2</sup> Australian Psychological Society 2011, *Evidence-Based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector*, Melbourne, p. 11.

<sup>3</sup> Ibid, p. 11.

*Sometimes I see children locked outside of the class room in a penned off area with no adult supervision. There are children in my son's class who they put in restraints on chairs who have little or no speech and no physical disability. I have talked to the child's parents when I see this and they have asked the school not to do this, but sadly they continue to do it every day.*

*I witnessed my child being physically restrained for too long. The incident left a bruise on his wrist and when I complained to the Department of Human Services and the Education Department, I was told the matter had to be resolved between the school and me! In other words the school had to 'self-discipline' itself - What a joke! I was totally disgusted with the way the matter was handled.*

*(My child experienced) restraint that led to an injury of support staff as she tried to intervene but instead escalated the situation putting my child and herself at risk. This staff member had no formal training or authorisation to physically restrain a child.*

*My son was restrained multiple times. He was left with bruising and locked in small rooms.*

*My son's school strongly recommends medication to control his behaviour. At a previous school my son was encouraged to spend time in the 'breezeway' to calm down, a concrete undercover area, outside his classroom. He does not have the verbal ability to request leaving such an area and I saw no evidence of an alternative communication method that he could use to communicate this.*

*Physical restraint was previously used (on my child) i.e. restrained by seatbelt into a 'time out' chair bolted to flooring.*

*When (my daughter) needed to go to the toilet frequently it was refused. She would become upset. I believe she was held down.*

*(My son) has had teachers use intimidation and physically drag him down corridors for refusing to follow instructions.*

*Three to four adults to (held my son) down. The last method we heard about was telling him to pretend he was a jellyfish therefore going limp and not struggling. This was obviously after he had been restrained and put on the ground.*

*My son attended a special school for six months when he was in Prep...Big mistake. He was put in a caged area outdoors to protect him from an aggressive student in his class, (this was) very upsetting for us and him...We quickly removed him from that school.*

*(Seclusion) happens to my child and many others at the school. It can be a small room or (being locked) outside...until the staff member lets them. This can be in summer when it's hot or winter when it's cold.*

*My child would spend most of the time he was permitted to attend school (which was under two hours) in a room with his aide with no windows. I would like to see any adult be subjected to those conditions and see if they cope.*

*(My son) has been confined to Principal's office because of 'behaviour' in the playground and refusal to comply with staff instructions. Much of this behaviour is 'triggered' by staff members' inability to deal with core issues relating to my son, his levels of stress and anxiety were through*

*the roof, and their insistence on his compliance only increased this anxiety and then he would go into meltdown and be physically violent.*

*(My daughter was) penned off in the classroom and not allowed breaks when overloaded.*

*At a school (my son) attended for a term before we removed him, he had to sit in the office every lunch, play and recess. He was not allowed to go outside and play even though he hadn't done anything wrong.*

*(My son was) barricaded in cupboard so his aide could attend a parade. (He was) kept in small room with his aide for 12 months. The Principal gave the instruction that he was not allowed to talk to or play with other students. He had never hurt anyone but was kept segregated. He even had different play times and half the recess time of other children.*

*The Principal carried my son to the sensory room and locked the door. My son had a major meltdown and started to destroy the room.*

*(My child was) placed in a small glassed office area in the corner of the classroom. He could not hear the class activity but could view (it). When I complained, the teacher placed paper on the glass to restrict his view.*

*The 'reflection room' is used consistently when a student displays 'unsavoury behaviour.' It's a room near the Principal's office with a security camera to monitor the child, (who is) unable to leave without permission.*

*When (my son) was at a (special school) he was repeatedly put in a time out room for swearing. He would hear a child shouting a swear word on the school bus and then he would repeat it in class so was regularly sent to timeout. I didn't discover this till the end of the year.*

*Perceived misbehaviour resulted in my child being barriered into the corridor until I picked him up.*

*People yell at me if I go out of the courtyard. Sometimes I just want to go on the oval but teachers said the boys might hurt me so I have to stay in the courtyard all the time, or the photocopy room – Student.*

*I have been told (my daughter) "cannot attend school without taking Ritalin" and also that "she MUST obey whether she likes it or not" or "she will have her enrolment reviewed."*

*At the school that my son used to attend, he and two other children aged five to six years old were locked inside a small windowless room called the 'thinking room.' My son now has a fear of small confined spaces such as lifts...I was not informed before or afterwards by his teacher or school Principal of this event. It is only years later that my son remembers and has had the courage to tell me.*

It is critical that restraint and seclusion is recognised as abuse. The direct experiences provided above demonstrate the significant harmful impacts experienced by students with disability due to restraint and seclusion. Despite this, restraint and seclusion is frequently justified as 'behaviour management.' Often, the language of occupational health and safety is used to position children and young people with as a safety risk to themselves, staff or others. However, this approach fails to examine the meaning behind behaviour and implement positive behaviour supports.

This has been recognised by a range of reports and inquiries, including the Victorian Equal Opportunity and Human Rights Commission 2012 report *Held Back: The Experiences of Students with Disabilities in Victorian Schools* and the 2015 Senate Inquiry into *Violence, Abuse and Neglect Against People with Disability in Institutional and Residential Settings*.<sup>4</sup>

Further, there is a significant body of evidence that clearly states that restraint and seclusion is not best practice in behaviour support.<sup>5</sup> It is critical that students with disability are able to access appropriate positive behaviour support strategies that can meet their specific needs and have been developed by an appropriately qualified practitioner.

It is also important that Victorian policy reflects human rights conventions impacting students with disability,<sup>6</sup> relevant frameworks regarding restraint and seclusion particularly the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* and evidence regarding best practice in behaviour support. However, CYDA is extremely concerned that the proposed regulation does not align with these human rights and policy documents and available research evidence.

The language used in the regulation, particularly “reasonable action” and “acts or behaviour that is dangerous” are highly broad and subject to significant discretion. In a context where there are no mandatory protocols regarding the use of restraint and seclusion nor requirements regarding the development and implementation of behaviour support plans, CYDA is highly concerned that this regulation will allow restraint and seclusion of students with disability to continue to occur.

There is a clear and urgent need to ensure that best practice in behaviour support is adopted in education settings. This should include clear guidelines and strategies to eliminate the use of restraint and seclusion and appropriate resourcing to implementing these strategies.

The proposed regulation 25 is incompatible with such work and should therefore be removed from the *Education and Training Reform Regulations*. CYDA would support the development of a regulation that specifically articulates the need to eliminate the use of restraint and seclusion in schools.

**Recommendation 1:** Regulation 25 be removed from the *Education and Training Reform Regulations 2017*.

**Recommendation 2:** Implementation of a strategy to eliminate the use of restraint and seclusion on students with disability in all Victorian schools and ensure state-wide availability of best practice in behaviour support in all education settings.

**Recommendation 3:** Collection and public release of data about the use and incidence of restraint and seclusion of students with disability in all Victorian schools.

### **Home Schooling**

There are a range of regulations that will impact students who are home schooled. These regulations relate to home schooling applications, information required by education authorities, requirements

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<sup>4</sup> Australian Psychological Society 2011, *Evidence-Based Guidelines to Reduce the Need for Restrictive Practices in the Disability Sector*.

<sup>5</sup> Ibid.

<sup>6</sup> United Nations General Assembly 1989, *Convention on the Rights of the Child*, United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*.

for the development of learning plans, assessments by education authorities and more.<sup>7</sup> However, there appears to have been limited consideration of the direct experiences of students with disability in the development of these regulations.

CYDA is increasingly being informed of students being home schooled due to the sustained failure of the education system to meet their needs. However, the lack of data prevents an accurate picture of this issue.

A typical education experience for students with disability involves discrimination, limited or no funding for support, inadequate expertise of staff, a systemic culture of low expectations, exclusion, bullying and abuse. It is reported to CYDA that in some cases these shameful experiences give families little choice but to home school their children. Further, in instances where students with disability are denied enrolment, often in multiple schools, home schooling can be the only option. This is reflected in the following Victorian direct experiences:

*(My child experienced) inadequate support at school, unwillingness of school staff to fully recognise needs and provide real flexibility and inclusion, and bullying (which has caused) trauma and a profound, debilitating effect on wellbeing. We have just this week submitted home schooling paperwork.*

*Our local secondary school would not let (my daughter) be included in all of the schools classes and activities so we went to a special school where she ended up having no extra support in the class room. Her literacy and numeracy went backwards. Her independence went backwards. Her health deteriorated so we are now home schooling.*

*(My daughter experienced) constant and ongoing bullying from a variety of children...I ended up having to home school for two and a half years.*

CYDA is concerned that increasing the requirements and regulations relating to home schooling will increase challenges for students with disability and their families in these circumstances. There is a need for further examination and review of the circumstances in which families choose to home school children with disability to inform regulations related to home schooling.

It is critical that systemic inadequacies within the education system are addressed to ensure ALL students with disability can access a quality school education. This would ensure that home schooling is only pursued when it is a genuine choice of families, rather than a result of inadequate school education provision.

**Recommendation 4:** Collection of data about students with disability who are home schooled in Victoria.

**Recommendation 5:** The Victorian Department of Education and Training commission an independent inquiry into home schooling in Victoria that includes a focus on students with disability and the reasons this option is pursued to inform reform. The inquiry should involve extensive consultation with students with disability and families.

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<sup>7</sup> Victorian Department of Education and Training 2017, *Consultation Draft - Education and Training Reform Regulations 2017*, pp. 30-33.

## SUMMARY OF RECOMMENDATIONS

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**Recommendation 5:** The Victorian Department of Education and Training commission an independent inquiry into home schooling in Victoria that includes a focus on students with disability and the reasons this option is pursued to inform reform. The inquiry should involve extensive consultation with students with disability and families.

## CONTACT

Stephanie Gotlib  
Chief Executive Officer  
20 Derby Street, Collingwood VIC 3066  
03 9417 1025  
stephanieg@cda.org.au  
www.cda.org.au