

Submission to Tasmanian Disability Services Act 2011 Review

I am writing in relation to the review of the Tasmanian Disability Services Act 2011, specifically the need for a Tasmanian Disability Commissioner.

There is a need for an Independent Commissioner to ensure the safety, health and wellbeing of people with a disability in Tasmania, as well as providing a complaints resolution process that is free, and confidential. It is important that this complaints process is timely, effective and accessible to all people with a disability in Tasmania and their carers/representatives. An inclusive education is a basic human right under the United Nations Convention on the Rights of Persons with Disabilities. Therefore education needs to be included in the scope of the Independent Commissioner including public, private and catholic schools.

I share our experiences to highlight the need for an Independent Commissioner, to be included in the Tasmanian Disability Services Act. My daughter is 16 years old and has Down Syndrome. Her experiences in the primary school system were positive and inclusive. My daughter attended the local Catholic high school and right from the start she encountered significant barriers to her inclusion. The negative experiences continued until the school terminated her enrolment in the middle of year 9.

My husband and I were committed to our daughter completing her education at the school, as she had many friends there and had known some of the students since Prep. The school community, students and teachers were supportive of our daughter's inclusion. We took every action known to us over the past four years to get the issues addressed, so our daughter could continue her education there. However, we encountered significant barriers at every step.

Our experience is that complaint processes available to families of children with a disability are not timely in addressing issues such as the ones we encountered. There can also be a power imbalance between families who may have limited financial resources and education providers who have access to significant legal resources. The complaints processes require significant commitment in terms of time, which is often limited for families of children with a disability.

Some of the negative experiences that occurred during the time my daughter was at the school (2018-2020) include:

- 1) Segregation: In term 1 of year 7 my daughter was not allowed into the school yard at recess and lunch time. She was made to stay in a room specifically for students with a disability. This meant she was not able to be with her friends. The reasoning given for this was that the Head of Learning Enhancement thought she would be at risk from the other students in the school yard. This was despite my daughter having gone to school with many of these students since prep and there been no evidence of risk.
- 2) Refusal to put in place required accommodations: The Head of Learning Enhancement refused to put in place the accommodations required by my daughter. This included the accommodations recommended and documented by her grade 6 teacher to assist her to transition to high school. It also included those recommended by her Speech Therapist, Down Syndrome Tasmania staff and parents.
- 3) Set work that was not age appropriate: My daughter was given work in high school that was not appropriate for her. The work given to her was prep-grade 1 level. In grade 6 her teacher had included my daughter in the grade 6 class work, by putting appropriate accommodations in place. For example simplified questions and use of a calculator, enabled my daughter to access the year 6

maths curriculum. This is consistent with current research in Down Syndrome and Secondary Maths, and the recommendations of Down Syndrome Australia. In high school these accommodations were not in place and my daughter was made to do work that was more appropriate for a 5-6 year old. My daughter went from learning topics such as area and volume in grade 6 which she enjoyed and was engaged in learning, to counting to 20 and playing pretend shops in year 7 maths.

4) Assessments not modified: My daughter was made to do the same tests as her peers with no accommodations. This was despite the fact that she was not learning the same content as her peers (see point 3 above) and was being tested on topics she had never been exposed to.

5) Denied opportunities to participate in school activities: At the start of year 9 all students participate in a school camp that includes a visit to Port Arthur. This enables students to socialise with others in their new classes and is also part of the year 9 curriculum. The school refused to allow our daughter to attend this camp. This was despite our daughter having attended all school camps (which start in year 4) without any concerns or issues being raised. She also attended a 5 day Heartkids Camp in Victoria without any issues or support, just a few weeks before the year 9 camp. The school indicated we must sign the Individual Education Plan (IEP) which we didn't have any input into and didn't agree with, or they would not let her go on camp.

6) Significant breaches of confidentiality: The Head of Learning Enhancement sent an email regarding my daughter in June 2018 to three interstate agencies including Down Syndrome NSW and QLD. Recipients of this email felt that the contents was one sided from a school perspective and designed to present a case against my daughter's inclusion. They were so concerned about the contents that they contacted Down Syndrome Tasmania to ensure we were informed. The information contained in this email was derogatory and untrue including comments that my daughter had never shown any evidence of learning in all of her schooling and that she was incapable of making true friendships. A complaint was put into Catholic Education Tasmania about this email by an external body. I am not aware of any action taken on behalf of the school or Catholic Education Tasmania to address the issues associated with this email. In fact the staff member involved continued to be heavily involved with our daughter's education despite having put in writing her very negative attitude towards her and her inclusion.

7) Refused input into Individual Education Plan (IEP): The school refused to allow input into my daughter's IEP from parents or her speech therapist. IEP meetings were not held. The IEP document was simply emailed to parents. When we provided input into the IEP document via email to school, it was not accepted and we were informed via email to consider enrolling our daughter at another school, more consistent with our philosophy.

8) No contact with teachers or access to daughter's school work: The school refused to allow my daughter to bring her school books home. As parents we had no access to her work or oversight of what she was learning. From May 2018 we were not allowed to have any contact with any of my daughter's teachers in any form (eg face to face, email or phone). All contact with the school was to go through the Head of Learning Enhancement who as highlighted in point 6 had a very negative attitude toward my daughter. For over 2 years we were not able to make contact with my daughter's teachers. This was a very difficult situation which we believed put our daughter at significant risk. We did not know whether information had been passed on to teachers about our daughter's medical conditions. We were also aware that there are additional risks for people with an intellectual disability in terms of abuse, and having one person at the school responsible (particularly one who communicated about our daughter in such a negative way) for all contact regarding our daughter was not an appropriate way to manage these risks.

9) Photos: The school took photos of all my daughter's work and of her during the day. I am not sure of the purpose of these, as we did not receive any of these. My daughter felt uncomfortable having photos taken all the time and asked for this to stop. The school ignored our request on behalf of our daughter to discontinue taking photos.

Termination of school enrolment

In July 2020 we received an email from the school principal indicating we must agree to certain conditions to enable our daughter to continue her enrolment at the school. This included having the Head of Learning Enhancement as a sole contact (despite concerns being raised regarding her attitude and behaviour towards my daughter, including a complaint made to Catholic Education Tasmania). It also included sitting a psychological test with the school psychologist first day back at school. The results of the psychological test were then to be provided to a lecturer from UTAS (who does not teach at the school), to write an IEP for my daughter, a process which demonstrates a lack of understanding of what should be involved in the development of an IEP including the key people to be consulted such as parents, teachers, student and allied health professionals.

We felt the requirements would put our daughter at considerable risk and informed the school we were unable to sign the agreement. We also provided a medical certificate which indicated that our daughter was too unwell to sit a psychological test at that time. The school were already aware that our daughter was very unwell, as she had considerable time off school due to illness and this was the fourth medical certificate we had provided.

We received an email from the Principal terminating my daughter's enrolment and indicating that he would send her belongings to our home via courier. The right to an inclusive education, a basic human right, was denied to my daughter. In addition, my daughter had no opportunity to say goodbye to her friends or teachers, something that may have made the school's decision to terminate her enrolment, easier to process.

Actions taken to address issues encountered by my daughter at high school

1) Meetings with school: Three meetings were held with the school in the first half of year 7 (2018). An advocate from ACD attended all three meetings. At the first meeting the Head of Learning Enhancement dominated the meeting, with minimal opportunity for others including ourselves, to contribute. The second meeting commenced by the school saying that they would not take onboard anything that was said at the meeting. The third meeting with the school principal, ACD advocate, Catholic Education Tasmania representative and parents was held in term 2. Concerns had been raised by the advocate that the school was breaching the Disability Standards of Education. The concerns were not addressed at all during the meeting, with the Principal indicating he would "fight" it all the way, as that is how students with a disability are educated at the school. We do not believe the school's grievance policy was followed. From our perspective the school's approach right from when we first raised concerns was very defensive. Not one of the concerns we raised was ever addressed by the school.

2) Complaint to Catholic Education: A complaint was submitted to Catholic Education Tasmania from an external body in mid 2018. The complaint was in regards to the attitude and behaviour of the Head of the Learning Enhancement in relation to my daughter and the email that she had sent to 3 interstate Down Syndrome Associations. We are not aware of any action taken to address these issues.

3) Complaint to Human Rights Commission: A complaint was accepted by the Human Rights Commission in early 2019. This complaint was later extended to include actions up until May 2019. The complaint was terminated by the Human Rights Commission later in 2019, as Catholic Education Tasmania and the school were not replying to the Commission's emails.

4) Federal Court: A case was submitted to the federal court late 2019. We had to withdraw from this case in 2020 as we lost legal representation due to the impact of Covid and were unable to find anyone able to represent us pro bono and community legal centres did not have the resources to take on the case. Our daughter's illness was also a factor in withdrawing the case. The court process requires considerable time and resources, that do not make it readily accessible to families with children with a disability.

Actions taken regarding daughter's termination of enrolment.

1) Minister: We contacted the office of the Tasmanian Education Minister to request advice at the start of July 2020. We spoke to an advisor, rather than the Minister directly. We were advised, as it was a Catholic School, the only thing that they could do was contact Catholic Education Tasmania directly and let them know of our concerns. This was not an option we felt comfortable with, given Catholic Education were already involved in the case.

2) Tasmanian Equal Opportunity Complaint: A complaint was submitted in January 2021.

Summary

There is a need for a Tasmanian Disability Commissioner in Tasmania to ensure the health, wellbeing and safety of people with a disability. This needs to include an Independent complaints conciliation process that is free, confidential, timely, effective and accessible to all. The scope of the Independent Commissioner should include human rights covered by the United Nations Convention on the Rights of Persons with Disabilities. Access to an inclusive education is a basic human right covered by the UN Convention, as such education needs to be in the scope of the Tasmanian Disability Commissioner. This needs to include all schools, including public, private and catholic. Access to a Tasmanian Disability Commissioner and an independent complaints conciliation process will hopefully mean that in the future all students in Tasmania will have access to an inclusive education, and that the process to address any issues that occur will be easier and more timely.