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Queensland Advocacy Incorporated
Systems and Legal Advocacy for vulnerable people with Disability

SUBMISSION TO

EDUCATION (STRENGTHENING DISCIPLINE IN STATE SCHOOLS)

AMENDMENT BILL 2013

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Queensland Advocacy Incorporated is an independent community-based advocacy organisation that has for the last twenty-five years campaigned for the rights of vulnerable people with disability in Queensland.

We offer our submission about the Education (Strengthening Discipline in State Schools) draft amendment Bill (the Bill) with an earnest plea to reconsider and reject this proposed amendment. For many students with disabilities and indeed many other students who become disengaged with the education system, this proposed amendment is a regressive and counter-productive move with long term consequences that could affect family functions and juvenile justice.

Over the past two decades the devolution of power to school principals have seen schools market themselves in various ways, seeking sponsorship from communities that may exert undue influence over school direction and management. With a need to prove "commercial success" as part of schools operations, measure taken have effectively marginalised an ever increasing number of students.

We have grave concerns that the proposed Amendment will further disenfranchise more students, who are often in greater need of the encouragement and support of an inclusive school environment.

We ask that there is a reflection on the years during the mid '90's when suspension and exclusion of students became a major issue particularly for students with disability. Work performed by Queensland Parents for People with a Disability Inc., and Youth Advocacy Network of Qld. was central to a partnership with key departmental officers towards making schools more supportive learning environments for all students.

We refer to the following quote from the Explanatory Notes to the Amendment Bill ("Strengthening Discipline in State Schools"):-

"*This over-prescription has placed an administrative burden on decision makers (primarily principals), and the red tape connected with discipline decision-making diverts the valuable time of principals away from their broader school management responsibilities. The detailed processes for suspension, exclusion and cancellation of enrolment decisions can also delay timeliness of action. This is particularly problematic when action is necessary to protect the interests of other students and staff.*"

The very nature of this quotation indicates a lack of concern or interest in the wellbeing of students and their families and an abdication of natural justice and supports to vulnerable students who require guidance and assistance.

Such misplaced attention for the ease of administrators and time-saving at the expense of the welfare and needs of students at risk is alarming and exhibits a coldly detached disregard for the future of young people. It is perhaps a lack of understanding of the seriousness and cumulative effect that suspension can have upon a student's reputation and of the risk it poses to escalated levels of exclusion. To treat suspension as an overly time laden administrative burden is to demean the

serious nature of such a measure and could be viewed as a somewhat trivial matter by the student and or his or her family.

Removal of these protocols effectively removes any chance of negotiation or overturning a pending decision for suspension and will create a chasm of distrust and disharmony between families and school principals.

"Legislation should have sufficient regard to the rights and liberties of individuals –- rights of a person are affected by an administrative power subject to appropriate review - Legislative Standards Act 1992, sections 4(3)(a)
The Bill expands a principal's power to suspend students for short periods of up to 10 school days (currently it is five school days). The right of review to such decisions will be judicial review."

At a cost of $802.00 to register for a judicial review...not including representation fees or any possible court costs incurred will deter many parents from seeking any appeal of suspension decisions. This lack of recourse to students and their families is an unevenly dealt hand considering the resources available to schools and the Department of Education.

Grounds for suspension and exclusion
Students charged with criminal offences

"The amendment gives to the principal for the first time clear authority to respond to criminal activity (whether charges or convictions) and to act in the best interests of their school community."

This supposition about a student gives rise to a presumption of guilt rather than innocence and is likely to cause damage to a student's reputation.

While we recognise that offenders charged with very serious crimes should be isolated from the main student population, for students who are charged of minor offences, attendance at school can assist with remediation of that student. Left alone to their own devices there is a more serious risk of further alienation and likely increasing criminal activity.

Broadening discipline options and principals' powers
Head of power for principals to control discipline

"To maximise capacity of these interventions to change student behaviour, the Bill provides clear authority for Community Service Interventions, actions under a Discipline Improvement Plan and detention to be performed on a non-school day, for example a Saturday."

The onerous task for teacher and parents to supervise and transport students for out-of-school-hours detentions and community service will far outweigh the current burdens attaching to procedures for suspension or any disciplinary responses. Such a measure is incongruent with time conservation and the notion of reducing red tape and will not progress any improvement with students/school relationships.

Increased powers for short term suspensions

"Principals can currently suspend a student for a 'short term' of up to five school days or a 'long term' of between six and 20 school days. As is the case currently under the EGPA, a student only has a right of review against long term suspensions. The Bill will increase the short suspension period from up to five school days to a period of up to 10 school days, making the long term suspension period 11 to 20 school days. This will act as a stronger deterrent for student misbehaviour and signal to students and parents the authority of principals in state schools."

Increasing the short term suspension to ten days will place an unreasonable burden on working parents who may have to take two weeks' leave with potential for loss of employment to supervise children who are suspended for this increased time.

Streamlining processes and reducing 'red tape'
Suspensions, exclusions and cancellation of enrolment

"Principals will be responsible for exclusion decisions in their school….
The Bill simplifies suspension, exclusion and cancellation of enrolment processes and reduces associated red tape….
The Bill enables suspensions to commence immediately upon telling the student. This facilitates immediate responses to student behaviour, with written notice to be provided as soon as practicable thereafter to confirm the nature of the decision. The Bill will remove the requirement on a principal to invite written submissions prior to excluding a student."

As stated earlier in this submission QAI is concerned that the motive for this amendment is questionable and that sufficient consideration has not been given to long term consequences for student wellbeing and their future. The proposed amendment shuts out students, parents and supporters from negotiating with school principals an agreement that could work for both parties with optimal outcomes.

Removal of behaviour plans

Students with disabilities have historically been removed on the basis of their disability by the untethered use of suspension and exclusion and it is likely that more students with disabilities would be affected by this amendment should it be adopted. Research and practice has provided sound evidence that positive behaviour approaches assist with keeping students in schools and working well within their local communities. Schools that have embraced all their student population, worked together to celebrate diversity and resolve issues have a proven record of student retention and happy and healthy communities.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals - Legislative Standards Act 1992, sections 4(2)(a)

"The Bill may be argued to adversely affect the rights of students and parents as it expands disciplinary interventions, permits disciplinary measures to occur outside of school hours (e.g. detention and Community Service Interventions) and expands grounds for suspension and exclusion, including on the basis of charges and convictions for criminal offences.

These reforms are considered justified as a student's right to education must be balanced against the competing rights of other students, teaching staff and the broader school community to access and attend a safe, supportive and focussed learning environment…..

The Bill also retains the requirement for the Director-General to take reasonable steps to provide an educational program for students who are excluded from all state schools."

QAI is deeply concerned that with such a skewed view of "***sufficient regard to the rights and liberties of individuals"*** the consequences of such an amendment will see a proliferation of 'special schools' designed for students who are suspended or excluded from mainstream education. While it is acknowledged that in the past there has been some excellent work performed in these types of schooling arrangements this has always been for those students who have had no other alternative and as an extreme last resort.

Many students with disabilities and their families have had the experience of the Department's "reasonable steps" to provide an educational program. This has often resulted in parents having to pay for and administer home schooling via the Distance Education program. This can be cost prohibitive for many families, and often imposes yet another onerous task on parents who may have to relinquish employment in order to deliver this program to their sons or daughters with disability. Severing a student from their local community will further isolate that child and their family from the social and moral supports that assist that family to belong to their community.

Greater range of discipline strategies for principals

"As a further safeguard, the policy and procedure must be available to the public for inspection and published on the department's website."

While QAI disagrees vigorously with all of the proposed amendment, we would urge that school policies and procedures are advertised to the school population via the school newsletter. It is unrealistic to assume that all students and families have home computers to access the department's website.

Legislation should have sufficient regard to the rights and liberties of individuals –- rights of a person are affected by an administrative power subject to appropriate review - Legislative Standards Act 1992, sections 4(3)(a)

"The Bill expands a principal's power to suspend students for short periods of up to 10 school days (currently it is five school days). ***The right of review to such decisions will be judicial review.*** *It is recognised that the principal's increased powers to impose short term suspensions may mean more students are subjected to suspensions of up to 10 school days without a right of review apart from judicial review.*
This potential breach of the FLP that rights of a person are affected by an administrative power subject to appropriate review is considered justified. The current legislation contemplates a non-review period as acceptable for a short period of time (i.e. up to 5 days). An extension of this period to 10 school days is not sufficiently long so as to offend principles of natural justice.'

It is offensive to consider that avenues of appeal for short-term suspensions of even 5 days be removed. Extending short-term suspensions to encompass periods of up to 10 days would only add insult to this grievous injury. QAI cannot understand the reasoning used to justify this proposal given the potential for injury it so clearly holds.

Such a narrow and unyielding approach to student and family relationships in schools, is highly likely to escalate conflict and discord within school communities.

"Finally, as in the case under the current EGPA, in circumstances where the Director-General has made a decision to exclude a student from all state schools, the most significant type of exclusion decision, external review to the Queensland Civil and Administrative Tribunal is available."

QAI believes that if the proposed amendments proceed in their current form the Minister for the Department of Education Training and Employment will be required to respond to an increase in complaints to the Anti-Discrimination Commission.

Legislation should have sufficient regard to the rights and liberties of individuals – consistency with principles of natural justice – Legislative Standards Act 1992, sections 4(3)(b)

"To have sufficient regard to rights and liberties, legislation must have due regard to natural justice. The Bill removes some existing statutory natural justice requirements such as the:
• requirements for the principal to meet with parents before making a suspension decision;
• capacity for an affected student to make a written submission against a proposed exclusion decision; and
• show cause process prior to cancellation of enrolment of a student (who is above compulsory school age).

These changes are warranted on the basis that these requirements impose a regulatory burden on principals in situations where natural justice can be achieved in more flexible ways."

The suggestion that *"these changes are warranted on the basis that these requirements impose a regulatory burden on principals in situations where natural*

justice can be achieved in more flexible ways," is flawed and must be reconsidered. If a flexible approach is truly what is required, this can best be obtained by increasing options for achieving natural justice, not by limiting them.

In closing QAI reiterates that the most effective and sound practices for inclusive and supportive learning environments can only be achieved when students, parents, teachers and principals work together, to recognise and appreciate diversity, enable opportunities for open discussion to resolve issues and develop plans for building successful relationships.