



Summary Statement of Investigation Published pursuant to section 26 of the *Ombudsman Act 1972*

This investigation arose from a complaint to the Ombudsman's Office by a former student of a South Australian High School and their parent (**the complainants**).

The complainants alleged that the Department for Education (**the department**) had failed to adequately deal with allegations that the former student was indecently and sexually assaulted by two students (**the students in question**). The complainants were particularly aggrieved by the department's decision to exclude the students in question, rather than expel them. They were additionally unhappy with the amount of support provided by the department and felt that the school and department had not acted in a fair and transparent manner when responding to the complaint.

The Ombudsman conducted a full investigation of the complaint, which considered the following issues:

- the adequacy of the department's policies and procedures that guide its decision to suspend, exclude or expel a student from attendance at a school
- the degree of support provided to the victims of alleged indecent and sexual assault
- whether the department's policies and procedures should be more transparent and openly available to the public.

Exclusionary discipline

There are a number of instruments which guide the department in relation to its use of exclusionary discipline, including the *Education and Children's Services Act 2019* (**ECS Act**), the *Education and Children's Services Regulations 2020* (**ECS Regs**) and the 'Suspension, exclusion and expulsion of students procedure' (**the SEE procedure**). Taken together, these instruments are designed to guide the department, and its decision makers (which are usually principals), to make decisions which are administratively sound and in the best interests of the children.

The Ombudsman found that the department was unable to produce objective recorded reasons to evidence its decision to exclude the students in question rather than expel them. This made the task of examining the decision difficult. Notwithstanding, in light of the known circumstances, the relevant provisions of the ECS Act and Regs, and other evidence, the Ombudsman determined that the decision was reasonably open to the department to make.

It is fundamental to good administrative decision making that accurate and complete records of decisions and the *reasons* that led to the decision are recorded. Therefore the Ombudsman concluded that the SEE procedure was deficient in this respect and made recommendations for the SEE procedure and the ECS Act and ECS Regs to be amended to require that reasons for an exclusionary discipline decision are recorded.

The Ombudsman also concluded that the SEE procedure failed to provide holistic guidance to decision makers in relation to exclusionary discipline, including recognising the impact and safety of an exclusionary discipline decision on a victim.

Lastly, the Ombudsman identified that the SEE procedure failed to require that specific written allegations of misconduct be put to a subject of a potential exclusionary discipline decision. Putting pointed allegations to the subject of an investigation is fundamental to good investigative technique and is central to the concept of procedural fairness.

Victim Support

In the matter investigated, the principal of the school formed the view that the allegations of indecent and sexual assault were well-founded soon after they were reported. Despite this, the school did not offer the victim counselling for almost a month even after significant escalation by the complainants. The Ombudsman concluded this was an inadequate response and of concern, identified that the department's counselling procedure failed to include that decisions of this nature should be made quickly and efficiently. The Ombudsman noted that efficient decision making in relation to the provision of counselling is in the best interests of the victim, the department and the school community.

Policies and procedures

The investigation noted that a report by Professor Linda Graham dated 26 October 2020, titled *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools*, previously identified that the department's SEE procedure and several other policies and procedures were not available online to the public. In their complaint to my Office, the complainants asserted that this created a power imbalance, as information critical to their understanding of the department's decision making was not available to them; the Ombudsman agreed with this submission.

The Ombudsman made the following recommendations to improve the department's handling of matters relating to exclusionary discipline, all of which the department has accepted, noting that recommendation 4 is addressed to the Minister for Education, and its implementation will be at the discretion of the government of the day:

Recommendation 1

That the department review the 'Suspension, exclusion and expulsion of students procedure' to provide decision makers with holistic guidance in relation to exclusionary practices, including information about recognising the impact and safety of an exclusionary decision on any victim.

Recommendation 2

That notice of suspension letters be amended to include a section where the allegations are specified in writing.

Recommendation 3

That the 'Suspension, exclusion and expulsion of students procedure' be amended immediately to include that where the principal has determined that any form of exclusionary discipline is warranted, that detailed reasons be recorded by the principal outlining the basis for their decision including what information/evidence they have relied on and what if any mitigating or outstanding factors have weighed on their decision.

Recommendation 4

That the Minister consider amendment to the *Education and Children's Services Act 2019* or *Education and Children's Services Regulations 2020* to include a requirement that where a decision maker determines that exclusionary discipline is appropriate, that the decision maker must make a written record of the reasons for their decision, including what information/evidence they have relied on and what if any mitigating or outstanding factors have weighed on their decision.

Recommendation 5

That the 'Provision of counselling for children, young people, parents and employees when responding to critical incidents of a sexual nature procedure' is updated to include that the provision of department funded counselling should be determined and offered within as short a time period as possible after the department has received notification of a traumatic incident.

Recommendation 6

That the department make available the 'Suspension, exclusion and expulsion of students procedure' online until such time that it is replaced with the revised version in addition to 'a copy of all policy, procedures and practice guidance relating to student discipline as per requirements under the FOI Act'.