



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

This investigation arose out of a complaint lodged by two members of the public (**the complainants**), who are the parents of a student (**the student**) attending a public high school (**the school**) within the Department for Education (**the department**).

In 2019, the student commenced year 8 at the school. The student has Autism Spectrum Disorder and Sensory Processing Disorder, and as part of their learning plan, could access two linked self-regulation spaces. At the end of term 3, the school informed parents and students that they would be closing one of the self-regulation spaces, and changing the purpose for which the second space could be used. A new exit-card system was introduced for the student. In 2020, the second self-regulation space was closed without prior notice. The complainants repeatedly queried whether the student's exit-card system remained in place, with no response for 4-5 weeks. The removal of the self-regulation spaces and the lack of clarity around an exit-card system led to a number of incidents, and the student's mental health deteriorated to the point where by March 2020, the student refused to attend school. Throughout this time, the complainants made the school aware of the student's struggles, and made numerous requests for a copy of the learning plan to ascertain what supports were supposed to be in place, however a copy of the learning plan was not provided.

In considering this complaint, the Ombudsman noted that Australia has signed and ratified several international human rights instruments relevant to the provision of education, including the United Nations Convention on the Rights of the Child (1989) and the United Nations Convention on the Rights of Persons with Disabilities (2008). These instruments establish the fundamental rights of children and young people to inclusive education, and impose various responsibilities on government departments who provide education services. They have fed into national and state legislation (the *Disability Discrimination Act 1992* (Cth) and the *Equal Opportunity Act 1984*), and resultant department standards and policies (such as the Children and Students with Disability Policy, the Principles of Inclusion for Children and Students with Disability in Education and Care, the Disability Standards for Education 2005, and the Autism Spectrum Guideline).

Issues considered by the Ombudsman

Failure to communicate regarding changes to the self-regulation spaces

The Ombudsman concluded that:

- following the closure of the first self-regulation space, communication regarding the spaces still available to the student was contradictory and led to confusion as to where and when the student could self-regulate
- the student found the new spaces to be noisy and unsuitable, and eventually stopped using the new exit card system as it did not assist their self-regulation
- the lack of warning and communication about the school's decision to close the second self-regulation space in 2020 was poor
- despite repeated queries by the complainants, it was not clarified until week 5 of term 1 in 2020 whether the student could continue to use the exit card system
- as a result, the student's mental health and behaviour declined

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- the student's struggles with the shift away from the self-regulation spaces were communicated by the complainants to the school. Therefore, the school should have been aware that the student was struggling, and that the situation was not improving
- while the department's policies do not mean that students or parents are entitled to dictate the supports they consider necessary, they require a level of input and proper engagement with a student, their parents or caregivers, and relevant support organisations and specialists. They also require a careful consideration of what is necessary and reasonable, an understanding of the triggers for a student's behaviour, and allowing for responses to be adjusted accordingly
- it appears that the school engaged in a number of conversations with the complainants. It is not unreasonable for a school, in consultation, to negotiate and change adjustments as necessary. However, where parents or caregivers are providing a school with feedback, this should be appropriately considered and taken onboard. If the current arrangement does not meet the student's needs, consideration should be given as to why, whether further adjustments are required immediately, or whether the current system should be trialled for a further period and reviewed at a future date
- where a student has adjustments in place, there should be clear communication at the start of a new school year regarding whether such adjustments will continue
- however, in considering the various communication issues that occurred, it appears the school was acting in a manner that was reactive rather than proactive
- the poor communication by the school contributed to an escalating situation and the student's subsequent disengagement from school.

As such, the Ombudsman found that the school (and by extension, the department) failed to appropriately communicate on a number of occasions regarding the closure of the self-regulation spaces, and thus acted in error for the purposes of the Ombudsman Act.

Failure to communicate regarding the student's learning plan

The Ombudsman concluded that:

- the school did in fact have a learning plan in place for the student in 2019
- despite repeated requests from the complainants to see the 2019 learning plan, and comments that the complainants were concerned a plan did not exist, a copy of the learning plan was never provided to them by the school
- this caused considerable stress and concern for the complainants, and led to the perception that there was in fact no learning plan in place for the student.

The Ombudsman found that in communicating with the complainants regarding the student's learning plans, the school (and by extension the department) acted in error.

Recommendations

The Ombudsman made 6 recommendations in his provisional report, in the interests of improving the school's practices and avoiding a recurrence of the errors identified:

- the establishment of a communication plan between the complainants and the school
- the creation of a communication strategy by the school for communicating with all students with disabilities and their parents or caregivers
- training to ensure staff are aware of their obligations under the communication strategy
- provision of a copy of the 2019 learning plan to the complainants
- provision of an apology to the complainants, acknowledging the oversight in failing to provide a copy of the 2019 learning plan.

The department accepted all of the recommendations, and implemented the final 2 recommendations prior to the issuing of the final report. As such, the final report only contained the first 4 recommendations.