



Ms Joanna Blake
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4 April 2020

Dear Ms Blake

Feedback on the draft Education and Children's Services Regulations 2020

I am writing to provide feedback on the draft Regulations which support the *Education and Children's Services Act 2019* in my roles of Guardian for Children and Young People, and Training Centre Visitor.

The Guardian is appointed to advocate for and promote the rights and best interests of children and young people under the guardianship of the Chief Executive of the Department for Child Protection. The Training Centre Visitor promotes and protects the interests and rights of children and young people on remand or sentenced to detention in the Adelaide Youth Training Centre.

Both of these roles are established under separate Acts, but each Act states that particular attention must be paid to the needs and circumstances of children and young people who have a physical, psychological or intellectual disability.¹

I am concerned that draft regulations 24, 26, and 27 which seek to enable schools to issue fines to students and/or recover costs for property damage, will disproportionately affect those in care, those in youth detention, and those with diagnosed or undiagnosed disabilities. Because of this, I do not support these draft regulations.

The attached addendum sets out my concerns.

¹ s 26(2)(b) *Children and Young People (Oversight and Advocacy Bodies) Act 2016*; s 14(2)(b)(iii) *Youth Justice Administration Act 2016*.

As is commonly my practice, it is my intention to publish an edited version of this submission on my office's website. Please contact Ms Flynn by Thursday 9 April 2020 if you have any concerns or wish to discuss this further.

Please let me know if you require any further information or wish to discuss this request. Your staff can also contact my Senior Policy Officer, Ms Jessica Flynn for this purpose on 8226 8570 or at jessica.flynn@gcyp.sa.gov.au .

Yours sincerely

A handwritten signature in black ink that reads "Penny Wright". The signature is written in a cursive, flowing style.

Penny Wright

**Guardian and Training Centre Visitor
Office of the Guardian for Children and Young People**

Feedback on the draft Education and Children's Services Regulations 2020

From Penny Wright, Guardian for Children and Young People, and Training Centre Visitor

4 April 2020

My feedback focusses on the current draft regulations which propose to enable schools to -

- Issue fines of up to \$200 to students for being on school property when they are suspended, excluded or expelled (regulation 24);
- Issue fines of up to \$100 to students who do not comply when required to undergo a search of their bag, locker or other receptacle (regulation 26);
- Recover costs for damage to government school property (regulation 27).

I am concerned these regulations will enable schools to stigmatise and punish already disadvantaged and marginalised children and young people in care and/or detention, and those with a disability. Children and young people who have experienced trauma, abuse and/or neglect may experience difficulties in regulating their behaviours, which can be exacerbated if poorly managed in the school environment. This may additionally result in this cohort being disproportionately affected by the above draft regulations.

There also appears to be no minimum age for issuing fines, or a clear path to appeal or dispute a decision.

The Department for Education provides my office with data on an annual basis which allows me to prepare a report examining certain characteristics and experiences of those in care who attend public schools.² The Department's own data demonstrates that -

- A greater proportion of all children and young people *in care* have learning disabilities compared to the overall government school student population, notably in speech and language skills.³
- The proportion of children and young people *in care* with an intellectual disability is nearly seven times, and the rate for those with a global developmental delay is four and a half times that of the rate of disability in the overall government school student population.
- Children and young people *in care* enrolled in government schools are over four times more likely to be suspended or 12 times more likely to be excluded than the broader government school cohort.

² The GCYP report, 'Children and Young People in State Care in South Australian Government Schools 2008-2018' looks at how well the system serves their needs and identifies a number of ongoing trends. It can be accessed [here](#).

³ The GCYP submission to the Legislative Council Inquiry into Access to the Education System for Students with Disabilities in September 2015 can be accessed [here](#).

These factors increase the likelihood that students in care may not understand verbal or written instructions to comply with a search, or to not visit school property if suspended, excluded or expelled. The recent report by South Australia’s Commissioner for Children and Young People, ‘Public Transport – It’s not fine’, examined the experience of children and young people receiving fines on public transport. The quote below can also be applied to this context –

“Some young people put in huge effort to keep connected to school, sport and social activities in the face of significant adversity. The challenge of day-to-day survival is so significant for these young people, that it can seem grossly unfair when the ‘system’ issues a fine for what to them, by comparison, is a trifling matter.”⁴

These regulations do not seem to consider that for many children and young people, school is a place of safety. Suspension, exclusion and expulsion isolates them from their peers and school community, but by banning them from being present on school property *at any time* isolates them from other community activities like sports.

The burden of issuing financial disincentives to students who misbehave seems to lack an understanding about the well-documented differences in judgement, decision-making and competence between children and adults. These draft regulations do not consider that deterrence relies on the assumption that students will understand the threat of a financial sanction (in addition to other behavioural sanctions already imposed), and then make a rational choice based on that knowledge. It also ignores their ability to pay, especially for those who may live independently.

These proposed provisions undermine some aspects of the National Principles for Child Safe Organisations⁵ as they can be seen as being overly punitive, applied in an inequitable manner, and also do not contain adequate safeguards to mitigate against the targeting of certain students.

Additionally, the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, requires that each State authority “must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the United Nations Convention on the Rights of the Child”.⁶ Draft regulations 24, 26 and 27 appear to be contrary to Article 3 of the United Nations Convention on the Rights of the Child, which require that agencies must act in a child’s best interests and keep them safe.

It is for these reasons that I do not support regulations 24, 26, and 27 of the draft Education and Children’s Services Regulations 2020.

⁴ Commissioner for Children and Young People SA (2019) Public Transport - It’s Not Fine: a report into systemic issues identified by South Australian children and young people in relation to their experience of public transport services, p 8. It is available [here](#).

⁵ Specifically the following Principles –

1. Child safety and wellbeing is embedded in organisational leadership, governance and culture;
2. Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously;
4. Equity is upheld and diverse needs respected in policy and practice;
6. Processes for complaints and concerns are child focused; and
7. Staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

⁶ s 5 *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.