



Attn: Principal Scott Dellar  
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15 October 2023

To Principal Dellar,

### **The reported suspension of 10-year old autistic student**

The Free Speech Union of Australia (FSU) is a non-profit organisation that aims to protect and promote the Free Speech rights of our members and Australians more broadly.

We are most concerned about a reported suspension of a student at Manor Lakes school.<sup>1</sup>

It was reported that a 10-year old autistic student was suspended from your school after expressing concerns about a female-identifying student using the female bathrooms. The asserted justification for the suspension is based on the speech of the student in question posing “a danger, whether actual, perceived, or threatened, to the health, safety or wellbeing of any person.”

The FSU considers the student to have been seriously wronged by this decision as it infringes their human rights (and is therefore potentially unlawful) in several important ways:

1. **Free Speech Rights.** The insistence that the student not express concerns or questions about someone with “boy parts” using the female bathrooms amounts to a policy of compelled speech. To our knowledge, nothing that was said by the suspended student actually posed any physical danger to the other student. The speech for which this student has been suspended for is merely posing questions, some of them may be uncomfortable for the female-identifying student to answer (and likewise someone with “boy parts” being in the female toilet was clearly a difficult and uncomfortable experience for the student that has been suspended) but this does not present any kind of danger to this student. This is clearly an

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<sup>1</sup> See report here: <https://www.youtube.com/watch?v=POOSUKSG6H8>

infringement of the Free Speech rights of the suspended student as it curtails their ability to voice concerns and questions, particularly when the same concerns are being expressed in wider public debate.<sup>2</sup> The suspension of this student cannot be justified on the grounds given as nothing said by the student can be said to “pose a danger”. By contrast, it would likely be considered protected speech under existing anti-discrimination law and anti-victimisation provisions.<sup>3</sup>

2. **Disability Discrimination and the Duty to Make Reasonable Adjustments.** This action by the school could also amount to unlawful discrimination on the basis of her disability, including a failure to make reasonable adjustments.<sup>4</sup> The suspended student has a diagnosis of autism, a condition that affects a person’s ability to navigate social situations. The incident for which this student is being suspended is presumably a result of the student’s inability to understand why someone with “boy parts” is using the female toilets and how to interact socially in that situation. The presence of people with male anatomy who identify as females in female spaces is a live debate which people (and in particular women) are having difficulty navigating. For a student with autism, it is wholly unreasonable to expect that they would be able to negotiate the situation this student found herself in where a person who she would consider to be male was in the female toilets. Compelling her to speak and act in a certain way would have been unreasonable had she been a neurotypical 10-year old student. At least on the facts made public, the school has failed to make reasonable adjustments based on her circumstances. Not only this, but by adopting a practice that punishes speech, the school’s policy could be considered to be one that systematically discriminates against neurodiverse students that may have particular difficulty expressing themselves within strictures imposed upon them.
3. **Right to education.** This student has a right to receive an education.<sup>5</sup> Suspending this 10-year old student for speech which in no way could be said to “pose a danger” is a completely disproportionate response. In addition to the duty to make reasonable adjustments that already applies, we note the recent recommendation of the Royal Commission on Disability advised against using “exclusionary discipline on students with disability unless exclusion is necessary as a last resort to avert the risk of serious harm to the student, other students or staff”.<sup>6</sup> It is the view of the FSU that the student should not be punished in any way for posing these questions. They are legitimate questions that merit a response and even a debate. The punishment given, a suspension, is one of the most severe punishments that can be given to students precisely as it necessitates depriving the student of an education during the time when the suspension occurs. Suspension is also likely to have a disproportionate effect on an autistic student compared to neurotypical students. The actions of the school in suspending this student amount to an unjust deprivation of her ability to receive an education, as well as presumably being unlawful disability

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<sup>2</sup> See section 15, *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

<sup>3</sup> Including the Sex Discrimination Act 1984 (Cth), the Disability Discrimination Act 1992 (Cth), as well as the Victorian Equal Opportunity Act 2010 (Vic).

<sup>4</sup> See section 22, Disability Discrimination Act 1992 (Cth).

<sup>5</sup> See right to education here:

<https://humanrights.gov.au/our-work/rights-and-freedoms/right-education>

<sup>6</sup> See Recommendation 7.2 here:

<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%207%2C%20Inclusive%20education%2C%20employment%20and%20housing%20-%20Summary%20and%20recommendations.pdf>

discrimination against her. We are also concerned about the chilling effect this will have on the other students that may have similarly difficult questions but will not raise them in an environment that punishes them for doing so. It also has the potential to make other neurodiverse students feel excluded.

On the facts that have been reported, the FSU considers this action by the school to be a serious infringement of this student's right to free speech, non-discrimination and to receive an education.

Unless there are facts that have not been reported that change the nature of this alleged incident, we expect that the suspension be rescinded and the student in question receives a public apology. We also expect that the school ensures that no other student has their speech rights curtailed and instead supports students to voice concerns and questions, even where this has the potential to make some students uncomfortable.

In particular and in line with the recent findings by the Royal Commission on Disability, we expect a full recognition of the duty to make reasonable adjustments for neurodiverse students, this includes accepting students that may speak and behave in a way that may be perceived as impolite or cause upset to other students.<sup>7</sup> By opting to exclude this student as punishment for speech that was likely a result of her autism diagnosis, the school has acted in a worryingly regressive manner and demonstrated that it is intolerant of neurodiverse students.

We ask that you urgently confirm that this situation has been corrected and the steps that will be taken to ensure that this does not happen again. Please send your confirmation to our Advocacy Director at [dara@freespeechunion.au](mailto:dara@freespeechunion.au).

Yours sincerely,

Free Speech Union of Australia

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<sup>7</sup> We note that this concern can apply to students with a range of disabilities, not just autism.