

NSW Ombudsman Inquiry into behaviour management in schools

A Special Report to Parliament under s 31
of the *Ombudsman Act 1974*

August 2017

NSW Ombudsman Inquiry into behaviour management in schools

A Special Report to Parliament under s 31
of the *Ombudsman Act 1974*

August 2017

NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

Phone 02 9286 1000

Toll free (outside Sydney Metro Area): **1800 451 524**

Facsimile: 02 9283 2911

National Relay Service: 133 677

Website: www.ombo.nsw.gov.au

Email nswombo@ombo.nsw.gov.au

ISBN: 978-1-925569-44-5

© State of New South Wales, August 2017

This publication is released under a Creative Commons license CC BY 4.0.

Foreword

This report examines the vital and complex area of behaviour management of students in NSW schools. All members of a school community – students, families, school staff and others – can be directly affected by how well this matter is handled within a school. Behaviour management is equally an issue of great concern to broader society and to many government and non-government agencies.

There is unqualified acceptance of the principle that all children and young people need access to a quality education to maximise their full potential. That principle becomes threatened when a student's education is adversely affected by their behaviour (and its underlying causes) and there is a relationship breakdown between the student and others in the school. In all schools some students are likely to have complex needs and challenging behaviour. The causes are various – a background involving family or other trauma, additional needs associated with a disability, economic or social disadvantage, conflict or isolation in the school community, or other factors.

This report focuses on issues concerning students with complex needs and challenging behaviour. The report discusses the difficult challenges that schools face, but also draws attention to reasonable steps that can and should be taken to meet the learning and support needs of students, within a framework of best practice and evidence-based behaviour support.

The report highlights the importance of the relationship between school staff and families/carers, and the significant costs to all parties where there is a breakdown in communication, trust, and respect. That relationship can be bolstered if there is early local resolution of complaint issues within schools. This will not always happen, and enhanced complaint and resolution processes must be available beyond the school level. Equally, there must be early identification of matters that require involvement of an independent external agency and specialist dispute resolution skills for certain matters.

This report is being published at the same time as the NSW Parliament is conducting an inquiry into the provision of education to students with a disability or special needs in schools in NSW. It is hoped that the report will assist that inquiry. To that end, the findings in this report are framed as 'proposals for reform' rather than final recommendations that require direct response from the government departments and other bodies to which some proposals are directed.



Professor John McMillan AO
Acting Ombudsman

Contents

Foreword.....	iii
Executive Summary	vi
PART 1: Behaviour management in government and non-government schools	1
Chapter 1. Introduction.....	2
1.1. Background.....	2
1.2. Students with complex needs and challenging behaviour.....	4
1.3. NSW schools.....	5
1.4. Legal and policy context.....	6
Chapter 2. Managing behaviour in schools.....	9
2.1. Positive behaviour support.....	9
2.2. The Positive Behaviour for Learning framework.....	12
2.3. The importance of leadership and culture	16
Chapter 3. Access to expertise	19
3.1. Public schools.....	19
3.2. Non-government schools.....	20
3.3. Feedback.....	20
3.4. Identifying and accessing expertise across and outside schools.....	21
3.5. Training and professional development.....	23
Chapter 4. Responding to behaviours of concern.....	26
4.1. Restrictive practices	26
4.2. Part day attendance.....	34
4.3. Distance education.....	35
4.4. Suspension and expulsion.....	36
4.5. Alternative settings.....	42
Chapter 5. School support for students in residential OOHC.....	45
5.1. Addressing trauma for children in OOHC.....	45
5.2. OOHC in Government Schools Policy.....	45
5.3. What our analysis shows	46
5.4. Observations made by residential OOHC providers.....	47
5.5. Relevant actions by FACS.....	47
5.6. Our observations.....	48

Chapter 6. Engaging Aboriginal students with behaviour support needs	49
6.1. Risk factors associated with disengagement from school.....	50
6.2. Our previous recommendations about addressing school non-attendance and keeping children and young people engaged in education	51
6.3. Progress by the department to better engage and support Aboriginal students	52
Chapter 7. Interagency collaboration	56
7.1. Networked Specialist Centres	56
7.2. A well-calibrated interagency response	57
7.3. What is required to achieve an effective interagency response.....	57
7.4. The impact of the NDIS	58
Chapter 8. Governance.....	60
 PART 2: Reportable conduct allegations involving students with disability and additional needs, and complaint handling.....	 63
Chapter 9. Responding to reportable conduct allegations and complaints	64
9.1. The Ombudsman’s role in overseeing reportable conduct	64
9.2. Our audit of child protection matters handled by EPAC	68
9.3. Findings from the independent review we commissioned of complaints and reportable conduct allegations involving children with disability	74
9.4. Improving complaint handling systems and practices	76
9.5. Complaints about non-government schools	84
9.6. Strengthening the Ombudsman’s complaint handling and reportable conduct functions	85
 PART 3: Proposals for reform	 87
Chapter 10. Proposals for reform	88
10.1. Department of Education	88
10.2. The non-government schools sector	93
10.3. Department of Family and Community Services.....	93
10.4. Department of Premier and Cabinet.....	94

Executive Summary

Introduction

Behaviour management in schools has featured in many matters brought to the Ombudsman's office. Issues recently brought to our attention relate to the use of restrictive practices in managing student behaviour; staff knowledge and practices in relation to behaviour support for individual students; staff access to appropriate guidance and expertise in the development of behaviour management strategies; the adequacy of educational systems and processes to effectively respond to complaints and to engage and communicate with parents/carers; and the associated impact on the educational outcomes of the students concerned.

Those issues have come to our attention through a range of sources. They concern behaviour management guidance and practice in both government and non-government schools.

We responded in December 2016 by commencing an inquiry into behaviour management in government and non-government schools in NSW, focused on:

1. Best practice in behaviour management in school settings.
2. The adequacy of the policy and practice frameworks across the school sectors for the development, implementation, monitoring and review of evidence-based behaviour management.
3. The adequacy of current complaint management arrangements for behaviour management in schools.

Our inquiry examined behaviour management in schools overall, but with a particular focus on students with complex needs and challenging behaviour. Within that broad cohort we also focused more specifically on students with disability or additional support needs, Aboriginal students, and students in residential out-of-home care (OOHC).

Key elements of the inquiry included:

- consulting with over 240 stakeholders, including representatives from government and non-government schools, peak agencies, families, residential OOHC providers, representatives from the disability sector, advocates, and union representatives
- visiting 12 government and non-government schools in metropolitan and regional areas that had been identified as examples of good practice in behaviour management
- auditing the policies and procedures of 53 selected non-government schools relating to student discipline, behaviour management, use of time-out strategies, use of restraint, suspensions and expulsions, and complaints
- obtaining and analysing school attendance and related data for students in residential OOHC
- engaging an independent consultant to review a sample of reportable conduct matters and complaints that involved students with disability, and
- auditing the Department of Education's handling of child protection matters that had been referred by schools to the department's Employee Performance and Conduct Directorate (EPAC) but were not required to be notified to our office.

Managing behaviour in schools

Positive behaviour support

Student behaviour is influenced by a wide range of internal and external factors. Good practice in supporting student behaviour involves a preventive, student-centred, and positive approach, including evidence-based targeted interventions to meet individual needs.

The department's policy approach to discipline and behaviour management in public schools is premised on a positive approach. Many non-government schools also provide guidance that promotes a positive approach to behaviour management. Our inquiry witnessed and heard about many good practice examples of positive behaviour support in government and non-government schools, including proactive work to identify students at risk and the provision of personalised support.

However, we also found there are gaps between what is required to deliver positive behaviour support, and the practice within schools. The impact of this gap between theory and practice on the involved students can be significant. Many stakeholders also emphasised the need for an increased focus on trauma-informed approaches to learning and support.

This inquiry has identified opportunities to build on existing behaviour support frameworks, to better deliver the intended outcomes.

The Positive Behaviour for Learning (PBL) framework

PBL is a multi-tiered prevention-based framework that is widely used in Australia and internationally. Extensive research has shown that PBL has positive effects on student behaviour across all ages and grades. It is based on three main components: prevention and early intervention; multi-tiered support; and data-based decision making. The graduated approach includes three tiers:

1. Primary prevention – universal strategies for all students, staff and settings
2. Secondary level prevention – targeted interventions for those who are not responsive to universal strategies, and
3. Tertiary level prevention – intensive individualised interventions, driven by formal functional behaviour assessment, for those who have not responded to targeted intervention.

PBL is currently implemented by approximately 50% of public schools in NSW. While the extent of the take-up of PBL in non-government schools is not known, information provided to this inquiry identified practice in many non-government schools that is consistent with the framework.

We also found positive practice and leadership in the adoption and implementation of PBL in public schools. However, we identified a need to improve the understanding of PBL in schools, and to increase quality control and scrutiny of PBL implementation. We noted that an additional \$15 million recently invested by the department to fund 36 dedicated positions to support the implementation of PBL in public schools provides an opportunity to address these issues.

A critical component of the PBL framework (and broader positive behaviour support) is functional behaviour analysis (FBA). This is the primary assessment method for students who require intensive individual intervention for challenging behaviour (Tier 3 or tertiary level prevention). It involves gathering data to determine why a particular behaviour occurs in a given context, in order to develop and implement appropriate interventions. We found that FBA is not consistently used in schools prior to adverse action being taken against a student in relation to their behaviour, and that expert advice should be relied on in deciding the action to be taken in response to particularly challenging student behaviour.

The importance of leadership and culture

A strong and consistent message to us – in our consultations in this inquiry and in our complaints and reportable conduct work – is that school leadership and culture makes a critical difference in handling challenging student behaviour. Leadership and culture are important in deciding how to prevent and respond to challenging behaviour; how to include students with disability and additional support needs in the school community; and building the strength of the school community more broadly.

In particular, we identified significant changes (positive and negative) that resulted directly from a change in school principal. A range of stakeholders commented also on the vital difference that positive, caring and respectful relationships between school staff and students can make in reducing problem student behaviours. We found positive examples of work along these lines in both government and non-government schools.

When leadership beliefs, attitudes and practices do not match what is required to deliver a supportive and inclusive school community, the consequences for students, school staff and families can be significant. A key message of this report is that principals have an immense impact on school culture and values. From one principal to another, there can be a substantial change in practice and approach, and marked differences in support for individual students.

This raises a central question about the adequacy of oversight and governance arrangements in schools. We believe there is merit in setting mandatory professional learning requirements for principals, including mandatory training on the Disability Standards for Education. We have indicated that this should also be considered in relation to the broader school executive group, including deputy principals and assistant principals.

Access to expertise

School staff require special skills to provide individualised and targeted support to students with complex needs and challenging behaviour. There can be a complex connection between a student's behaviour and a disability, trauma or other significant issue. Many school staff do not have these particular skills.

Our inquiry heard from many people that there is limited expertise in providing behaviour support in schools. Greater assistance is required both to deliver appropriate expertise and to provide strategies that are practical for the school environment. We found that schools often do not seek external expertise in providing support to students with complex needs and challenging behaviour – even in circumstances in which a school is taking action that is likely to adversely affect a student's education.

It should also be easier for school staff to identify potential sources of expertise in the school system. Public school principals should better understand how the funding provided through the Resource Allocation Model (RAM) can be used to source relevant expertise from other schools and external parties.

It is equally important that staff in dedicated positions that require them to provide expert assistance to schools should have the requisite skill set. Staff in specialist/advisory positions should have higher-level skills in undertaking comprehensive functional behaviour assessments and developing behaviour plans with evidence-based strategies.

Potential leaders should be identified to build capacity across schools to support students with complex needs and challenging behaviour. Those leaders should be provided with the opportunity to work with existing specialist teachers so that, over time, the numbers of teachers with the expertise in this area are significantly expanded.

Responding to behaviours of concern

Restrictive practices

Restrictions on students' rights or freedom of movement are used by schools with the primary purpose of protecting the person or others from harm. Restrictive practices that feature in school settings include physical restraint and seclusion of students (that is, isolating a person on their own in a setting from which they are unable to leave).

Our work has identified instances (including but not limited to the case studies in this report) in which time-out rooms have been used in ways that are not consistent with the guidelines that have been issued by the department, and that comprise seclusion of individual students. Among the issues that have been identified are staff acting contrary to (or in the absence of) a student's behaviour plan; staff locking students in a room for extended periods of time; inadequate supervision of the student; and inadequate prior assessment of risk or the needs of the student. We noted that some of restrictive practices were used repeatedly and over an extended period of time before concerns were raised.

We also identified instances in which physical restraint was used at times when there was not a 'real and immediate threat' to a student or others, but was part of a broader response to the student's [concerning behaviour].

The use of restrictive practices can have a significant and traumatic impact on the involved student, as well as on staff and other students. The starting point for any discussion about the use of restraint and seclusion should be that all efforts should be made to structure environments and provide supports so that the restrictive practices are not required.

Across government and non-government schools, there is a need to ensure that clear guidance is provided to staff and the school community about the use of time-out rooms, and to distinguish between seclusion and the use of safe spaces/voluntary withdrawal. Greater guidance is required on the use of restrictive practices, including seclusion and restraint. There is also a need for greater rigour in the actions that are required in response to critical events involving restrictive practices, including reporting and related monitoring arrangements.

Part day attendance and distance education

A useful option for some students is to attend school for only part days, or to access distance education. For example, part day attendance can be an effective strategy for students who have been away from school for an extended period of time or who have a background of significant trauma. Similarly, distance education can be a useful option for some students in providing greater flexibility than a regular school environment.

This inquiry identified concerns about the extent to which part day attendance and distance education are used by schools as strategies to limit the amount of support they need to provide to students. As to part day attendance, we received information that some students were on a 'loop' of part day attendance, suspensions, and calls to parents/carers to pick their child up early. We heard from parents/carers who felt that they had no choice other than to agree to the part day attendance when proposed by the school.

We have identified opportunities to strengthen safeguards by building additional rigour into the approval process for part day attendance and distance education. Expert advice should be obtained and implemented before an application is considered or recommended for approval.

Suspension and expulsion

The suspension of students from school is a key component of a school's welfare and discipline policies. Suspension can be an important safeguard where a student's conduct harms or threatens the safety of others. There is, however, no research evidence that the general use of suspensions reduces disruptive classroom

behaviour. Research shows that suspension may exacerbate challenging behaviour for students with disability or trauma. Students who are over-represented in suspensions include students with cognitive/learning impairments, students with a child protection/OOHC history, and Aboriginal students.

Key points in the department's suspension process are the decision to suspend a student and the suspension resolution meeting. At these points, there should be an examination of the underlying cause of a student's behaviour, in order to review what has occurred and to identify and implement further actions. This examination does not always occur in the department's processes. Nor is there consistent compliance with the requirement in the suspension procedures that appropriate internal and external support personnel are consulted prior to imposing a suspension (except in limited circumstances). Given the significant consequences for students of suspensions, we have identified the need for greater rigour in the process, and in the monitoring of practice.

The department needs also to address issues that we raised in 2008 relating to the information that is collected and analysed regarding suspensions and students with disability or additional needs. In particular, the department needs to be able to analyse suspension information to ascertain the proportion of suspensions that relate to behaviour associated with disability, and any related practice issues. There is a similar need to strengthen the collection, analysis, and reporting on suspension and expulsion data in relation to other students with complex needs and challenging behaviour, including students in residential OOHC.

Alternative settings

Students with complex needs and challenging behaviour are in all education settings – in mainstream schools, support classes, and schools for specific purposes (SSPs). Some SSPs specialise in students with particular support needs, including learning centres (also known as 'behaviour schools').

Based on the research, the default position in all mainstream education settings should be the inclusion of students with disability, and students with complex needs and challenging behaviour. All reasonable efforts should be made to ensure that the needs of students with additional needs are met in the mainstream setting. However, some students with complex needs and challenging behaviour may require a different approach to what is typically provided.

We noted in particular the benefit of smaller class sizes and personalised support for some students, such as those with a background of substantial trauma, and/or with complex mental health concerns. We saw evidence of learning centres and other specialist settings providing a more flexible approach for these students. Those settings may be better able to accommodate behaviour-related incidents, have a higher threshold for suspension, show less concern about more minor issues such as student compliance with uniform requirements, and implement changes to the physical environment of the school to minimise the impact of behavioural incidents on the school and the students.

From our work, it is not always evident that all reasonable measures (including gaining expert advice) have been taken by schools before adverse action is taken and/or the need for alternative education options are discussed. However, we are also aware of the significant complexity of some students with particularly challenging behaviour.

No single education option will work for all students. Consequently, there must be a wide range of educational options to accommodate the needs of as many students as possible. While NSW has a range of settings, the information from our consultations and the data relating to the school attendance of students in residential OOHC indicates that a broader range of options is needed – particularly for students with significant trauma, behaviour, and/or disengagement to the extent that they are effectively not receiving an education.

School support for students in residential OOHC

We obtained school attendance and related data for children and young people in statutory OOHC who are living in residential care. This was done to better understand the challenges facing the education system in supporting students who have significant support needs. Specifically, we obtained data from eight providers of residential OOHC, that together support 54% of the residential OOHC population in NSW. We

sought information about the patterns and reasons for school non-attendance for all children who had been in their care for three months or more and who had missed more than 20 school days in 2016 for reasons other than ill-health.

The eight agencies provided information for 295 school age children and young people who had been in their care for three or more months in 2016. Of these, 128 children (43%) missed 20 or more school days in 2016 for reasons other than illness. They missed an average of 88 school days in 2016, equating to almost half (44%) of the school year. Most of the 128 children had additional support needs; more than half had a disability; and they had missed school days due to suspension, expulsion, and delayed enrolment. Over three-quarters (229) of the 295 children in residential OOHC were enrolled in public schools in 2016; the department's data systems only recorded 26 (11%) as being in OOHC.

Overall, the evidence indicates that the public education system is struggling to meet the needs of a substantial number of the children in residential OOHC. There is also a need for improved work between the Departments of Education and Family and Community Services to ensure that children in OOHC are accurately identified at an early point to enable an appropriate and informed response to meeting their learning and support needs.

Engaging Aboriginal students with behaviour support needs

Our previous work in relation to Aboriginal communities has found that a child's failure to regularly attend school is often an indicator of broader abuse and neglect. We found a clear link between poor school attendance and child sexual assault in high need communities. This inquiry has likewise found that disengagement from school and poor educational outcomes are linked with other indicators of social and economic disadvantage that are disproportionately experienced by Aboriginal people.

Aboriginal communities across the state have consistently told us that they consider the failure of many children to regularly attend school, including as a result of suspensions, to be a serious problem requiring urgent attention. Several community members we consulted see a need for education to be at the centre of case planning for at-risk children. This should include support for families to ensure that children regularly attend school.

Following the release of our 2011 report on addressing Aboriginal disadvantage, the department implemented significant reforms aimed at improving educational engagement and outcomes for Aboriginal children and young people in school. The most significant reform is the *Connected Communities* strategy, a key component of OCHRE (the NSW Government's plan for Aboriginal affairs). *Connected Communities* aims to build genuine partnerships between schools and their local Aboriginal communities, and to provide Executive Principals with unprecedented authority to tailor education responses to the needs of the involved communities. The 15 participating schools are intended to operate as 'service hubs', playing a lead role in facilitating services from external agencies to support the learning and wellbeing needs of students.

Overall, the evidence to date suggests that *Connected Communities* is a promising initiative. It provides a strong model for collaborative practice and for testing innovative approaches in providing behaviour support to students in schools across NSW. However, a central challenge is to implement the intended 'service hub' vision. This is necessary to ensure that services are provided that break down the barriers to children's school engagement and learning.

While it will be important for innovative approaches to be tested within the relatively small number of schools participating in *Connected Communities*, the challenge for the department will be in ensuring that the lessons learned, and gains which are made are sustained – and applied more broadly across the state.

Interagency collaboration

There is significant collaboration between government and non-government schools and agencies in supporting students with complex needs and challenging behaviours. There is, on the other hand, growing recognition that a stronger 'systems' model is needed to deliver the coordinated, multi-agency response which is often required. The *Connected Communities* strategy recognises this need.

A significant initiative taken by the department has been the progressive establishment of networked specialist centres. These add an extra level of expertise to support the work of involved schools and specialist support staff in addressing complex learning, wellbeing, and behaviour needs of students. The networked specialist centre facilitators can support schools, vulnerable students and families by assisting and managing local interagency coordination and service delivery.

However, consistent feedback from school representatives in this inquiry was that the potential of these centres has not been fully met nor the desired results seen in practice. A recurring comment is that the facilitators do not always have the necessary connections and relationships to bring services together.

A necessary step is to have the right governance arrangements in place to drive interagency case management initiatives, particularly at the local and regional level. Over time, a comprehensive, integrated service system must be built within local communities. If longstanding issues of cross-agency governance and leadership are not effectively addressed, newly-badged initiatives are unlikely to be any more successful than earlier attempts to coordinate agency efforts.

There is a related need to closely monitor if the desired outcomes are being achieved. This evaluation should feed into ongoing refinement of the operating frameworks.

The potential impact of NDIS funding is also relevant to delivering an effective, coordinated response to the needs of students with disability. The NDIS will bring additional challenges for schools in undertaking interagency work, with a shift away from engaging a known government agency to potentially having a range of services engaged with the child with disability.

A principle that underpins the NDIS is 'choice and control' resting with a participant and – in relation to children – their families. Schools and other agencies that provide support to children will need to align their strategies with the 'choice and control' principle. In effect, a dual strategy is required – strong interagency practice, combined with a strong and effective partnership with involved students and their families.

Governance

Our inquiry has identified significant variation between public schools in their compliance with policy and practice requirements in key areas. Some schools have deviated from requirements and acceptable practice over an extended period of time.

This points to a weakness in arrangements for monitoring compliance with policy and practice requirements. Some of the monitoring arrangements are relatively new. A combination of external and internal compliance checking may be desirable. As to external checking, there should be a thorough and rigorous auditing process that is well calibrated to risk – to ensure regular, independent reviews of practice, carried out in the context of a sophisticated risk management framework. As to internal checking, there is a need to examine the adequacy of the data that is captured and analysed by Directors, Public Schools (and others) in relation to the implementation of key policies.

Responding to reportable conduct allegations and complaints

Part 3A of the *Ombudsman Act 1974* requires the Ombudsman's office to oversight the handling of reportable child protection allegations that are made against employees and certain volunteers of thousands of government and non-government agencies in NSW. 'Reportable conduct' comprises:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

Section 25CA of the Ombudsman Act enables the Ombudsman to determine that certain kinds of allegations are exempt from the reporting requirements that apply to agencies within this jurisdiction. A class or kind determination was made in 2010 that exempts certain allegations of ill-treatment, neglect, and physical assault from being notified by the department to our office.

As part of this inquiry we reviewed a sample of reportable conduct matters that fell within this determination and were not notified. We also looked at how EPAC was handling enquiries it receives from schools about child protection matters involving students with disability that, while not meeting the threshold of reportable conduct, still required effective resolution. In total, we reviewed 121 enquiries to EPAC and 26 'class or kind' matters. This review of 147 matters found:

- Significant concerns have been expressed to our office about the absence of external oversight of both actual and potential ill-treatment of students with disability in schools. We agree that *all* such allegations of ill-treatment should be externally reviewed by the Ombudsman, and will accordingly amend our class or kind determination with the department.
- There is a need for appropriate training at the school level as to the various types of reportable conduct, including how to interpret the definition of ill-treatment. Clear guidance is required as to which allegations of the use of force against students should not be regarded as 'trivial' or 'negligible'.
- Serious reportable conduct allegations that are the subject of 'evidence based investigative' action can, on occasions, also partly be addressed by sophisticated 'resolution-focused' strategies. This is particularly relevant where a parent or carer has expressed concern about any aspect of a matter.

As part of our inquiry we engaged Mr Kieran Pehm (former Health Care Complaints Commissioner and ICAC Deputy Commissioner) to conduct a review of the handling of complaints and reportable conduct allegations involving students with disability. Mr Pehm identified the need to encourage a stronger resolution focus in relation to complaints and reportable conduct allegations, noting that:

- many complaints and certain reportable conduct allegations involving students with disability do not respond well to traditional investigation and determination of misconduct; the objective should be to restore trust wherever possible, as quickly as possible
- a more effective complaints resolution service is required for complaints about reasonable accommodation; the complaints service should be responsive and accessible to parents/carers and principals, and incorporate expert mediation skills, and
- certain disputes that arise between parents/carers and schools should be referred to an independent external body to resolve before parties become entrenched in their positions.

In a high proportion of the complaints to our office about the department there has been a fundamental breakdown in communication, trust and respect between the involved schools and families/carers. In numerous matters, the problems have escalated to a point where the issues in dispute become intractable, the relationships are fraught and adversarial, and legal action (on both sides) is taken or threatened. Many issues at the heart of these matters seem relatively straightforward and stood a good chance of successful resolution if an effective resolution-focused approach had been adopted.

We support approaches to strengthen early and local resolution of complaint issues. However, where relationships at the local school level have broken down, there is a need to strengthen complaint and resolution processes beyond that level. In a number of complaints where an alleged the failure to provide a student with disability with 'reasonable adjustment' was not resolved by the department, the matter has been taken to the Australian Human Rights Commission (AHRC) and then the Federal Court. Meanwhile, the issues that need to be addressed for the involved child can remain on the sidelines – and the student out of school – for many months. From our experience, it is evident that many of these matters should have the input of specialist dispute resolution skills at the earliest opportunity.

Limited external avenues of complaint handling exist in relation to non-government schools. They include NESAs (if the complaint relates to compliance with the requirements of the Education Act), and the AHRC (if the complaint relates to discrimination). A complaint about a non-government school cannot be made to the Ombudsman unless it is a complaint relating to a reportable conduct matter.



PART 1

Behaviour management in government and non-government schools

Chapter 1. Introduction

1.1. Background

Issues in relation to behaviour management in schools have featured in many matters brought to the NSW Ombudsman's office over an extended period of time. In 2007/08, we conducted an investigation into the Department of Education's (the department) policy and procedure for long suspensions, and made a range of recommendations aimed at improving practice in this area.

More recently, we received information through a range of sources that raised questions about behaviour management guidance and practice in government and non-government schools, and the associated impact on the educational outcomes of the students concerned. Sources of information have included reportable conduct notifications and complaints to our office; issues raised by external stakeholders, including families, disability advocates, residential out-of-home care (OOHC) providers and Official Community Visitors; and media reports. Among other things, the information raised questions about:

- the use of restrictive practices, time-out or seclusion rooms and other enclosed spaces
- staff awareness and implementation of documented behaviour management strategies for individual students
- the adequacy of systems and processes for developing, monitoring and reviewing behaviour management strategies
- the adequacy of training of staff in behaviour management, including positive behaviour support
- access to appropriate guidance and expertise in the development of behaviour management strategies
- the adequacy of actions to promote and uphold a culture of inclusion
- the adequacy of systems and processes across the school sectors to effectively respond to complaints relating to behaviour management practices and related issues, and
- the adequacy of engagement and communication with parents/carers in relation to behaviour management strategies and related issues.

While the above issues are relevant to all children in schools, they are particularly pertinent for those children with disability who require behaviour support, children in OOHC whose past experiences can result in them presenting with behaviour challenges, and other children who have faced trauma and significant disadvantage, including (but not limited to) Aboriginal children who have had those experiences.

Substantial numbers of children in the above cohorts receive, or are eligible to receive, community services. Section 11(1)(e) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* enables the Ombudsman's office to inquire into matters affecting 'persons receiving, or eligible to receive, community services'. A number of the issues are also relevant to the exercise of the Ombudsman's 'keep under scrutiny' function under section 25B of the *Ombudsman Act 1974*, as good systems and practices in relation to behaviour management and support can prevent reportable conduct as defined in Part 3A of the Act.

We therefore initiated an inquiry into behaviour management in government and non-government schools.

The inquiry had three main areas of focus:

1. Best practice in relation to behaviour management in government and non-government school settings.
2. The adequacy of the policy and practice frameworks across NSW government and non-government school sectors in relation to the development, implementation, monitoring and review of evidence-based behaviour management.
3. The adequacy of current complaint management arrangements across NSW government and non-government school settings in relation to behaviour management practices.

Key components of the inquiry

The inquiry included consultation with over 240 stakeholders, including representatives from government and non-government schools, peak agencies, families, residential OOHC providers, representatives from the disability sector, advocates, union representatives, and others. As part of the inquiry, we asked stakeholders for examples of schools that represent good practice in behaviour management. In May 2017, we visited 12 government and non-government schools in metropolitan and regional areas.

The inquiry also involved an audit of policies and procedures in selected non-government schools. We asked 31 Independent schools and 22 Catholic systemic schools to provide us with a copy of any policy, procedure, or other guidance they had in relation to:

- student discipline
- behaviour management
- use of time-out strategies (such as time-out rooms)
- use of restraint
- suspensions and expulsions, and
- complaints.

Selection of the schools was designed to provide a wide cross-section of: types of Independent schools; Catholic systemic schools across all 11 Dioceses; school sizes; geographical areas; and primary, secondary, central and specialist schools.

To gain a better understanding of the extent of the challenges facing the education system in supporting students with complex needs, we obtained and analysed school attendance and related data in connection with children and young people in residential OOHC, involving government and non-government schools.

As well, to inform our evidence base in relation to relevant reportable conduct allegations and complaints, we:

- engaged an independent consultant to review a sample of reportable conduct cases overlooked by our office in which the alleged victim was a student with disability; and a sample of complaints handled by our office about the department's treatment of students with disability, and
- audited the department's handling of child protection matters that were referred by schools to the department's Employee Performance and Conduct Directorate (EPAC) but had not been notified to our office in accordance with the requirements.

In Part 1 of this report, we cover issues arising from our consultations and broader work in examining behaviour management in schools. Part 2 of the report is focused on our particular consideration of reportable conduct allegations involving students with disability, and issues relating to complaint handling in schools more generally. Part 3 outlines our proposals for reform.

While our inquiry encompassed government and non-government schools and included consultations with representatives from across the government, Independent and Catholic systemic schools sectors, we recognise that the text is heavily weighted to public schools. Among other things, this reflects the challenge of seeking to adequately capture the arrangements and practice of such a large and diverse sector, and the limited time in which the inquiry could be conducted.

1.2. Students with complex needs and challenging behaviour

Any student can demonstrate behaviour that is challenging at times. However, there is a subset of students who demonstrate behaviour that is challenging to the extent that it 'disrupts the capacity of the person, or other persons, to learn within the school environment, and which requires targeted or personalised interventions.'¹ Many of these students have complex needs associated with a range of factors, such as disability; mental health concerns; exposure to abuse, neglect or other trauma; and difficult personal or family circumstances (including socio-economic factors, drug/alcohol use, and family breakdown).²

During the course of the inquiry, representatives from government and non-government schools consistently told us that the complexity of students coming into schools has increased, and is continuing to increase. In particular, they reported increased complexity associated with some students with autism, and perceived increased numbers of students presenting with anxiety and other mental health concerns.

While our inquiry has examined behaviour management in schools overall, we have had a particular focus on students with complex needs and challenging behaviour, given the substantial issues in play for this cohort, and their significant intersection with behaviour management and discipline processes in schools. As noted in the Introduction, while we have considered students with complex needs and challenging behaviour at large, we have also taken a particular look at some cohorts of students who tend to feature in this group: students with disability or additional support needs; Aboriginal students; and students in residential OOH.

Later chapters in this report have a particular focus on students in residential OOH (Chapter 5) and Aboriginal students (Chapter 6). Students with disability feature throughout this report, including in Part 2 where we take a closer look at reportable conduct allegations involving students with disability.

Students receiving targeted special education services³ comprise 6% of all school students in NSW, including 6.5% of public school students, and 4.9% of non-government school students.⁴ More than 90,000 students (12%) enrolled in NSW public schools receive additional support or adjustments for learning because of disability.⁵ The Catholic Education Commission⁶ advises that almost 50,000 students in Catholic schools have personalised learning plans.⁷

The Australian Institute of Health and Welfare (AIHW) reports that people with disability continue to have lower levels of educational attainment than those without disability.⁸

Data from the department's Centre for Education Statistics and Evaluation (CESE) (relating to public schools) identifies that:

- In 2015, 557 students with 'behaviour disorder' were enrolled in support classes and Schools for Specific Purposes (SSPs); mostly (85%) in SSPs. Between 2013 and 2015, the number of students with behaviour disorder enrolled in support classes and SSPs reduced by 4.1%.⁹
- In 2015, 1,758 students with 'emotional disturbance' were enrolled in support classes and SSPs; just over half (51%) were in SSPs. Between 2013 and 2015, the number of students with emotional disturbance enrolled in support classes and SSPs increased by 8.3%.¹⁰

1. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour (2015) *Schools for All Children & Young People*, p33.

2. The factors seen in relation to students with complex needs and challenging behaviour in NSW are consistent with those reported by the ACT Expert Panel on Students with Complex Needs and Challenging Behaviour in its review in 2015.

3. The Productivity Commission bases the numbers on the criteria for enrolment in special education services or special education programs.

4. Productivity Commission, *Report on Government Services 2017*, Volume B, Chapter 4: School Education.

5. Department of Education *Annual Report 2016*.

6. At the time of writing the report, Catholic Schools NSW (CSNSW) – a company owned by the NSW Bishops – is in the process of replacing the Catholic Education Commission as the state's Catholic schools peak body.

7. The Catholic Education Commission has advised that 43,860 students in Catholic systemic schools in NSW have personalised learning plans, as well as 5,488 students in independent Catholic schools (advice provided in meeting with NSW Ombudsman, 27 July 2017).

8. Australian Institute of Health and Welfare (2017) *Disability in Australia: changes over time in inclusion and participation in education*, Cat. No. DIS 69. Canberra: AIHW.

9. Most of the reduction was in support classes, where enrolments of students with behaviour disorder reduced by 11.3%.

10. Most of the increase was in support classes, where enrolment of students with emotional disturbance increased by 14.1%.

1.3. NSW schools

There are over 3,000 government (public) and non-government (Independent and Catholic systemic) schools in NSW, supporting over 1.1 million students.

Table 1: Number of schools, students and active staff in NSW, by type of school, 2015

	Government schools	Non-government schools
Primary schools	1,607	494
Secondary schools	369	143
Central schools	65	239
Schools for specific purposes	110	52
Total schools	2,151 ¹¹	928 ¹²
Total FTE¹³ students	771,978 ¹⁴	409,627 ¹⁵
Total staff active in schools	71,152	41,488 ¹⁶

Source: Productivity Commission *Report on Government Services 2017*, Volume B, Chapter 4: School Education

Under the department's Local Schools, Local Decisions education reform agenda, since 2012 NSW public schools have been given greater authority to make local decisions to best meet the needs of their students, including (since 2016) responsibility for managing 70% of the department's school education budget.

The non-government schools sector in NSW is made up of Catholic systemic schools, other school systems¹⁷ (such as the Seventh Day Adventist Church), and Independent schools, some of which are affiliated with religious denominations or educational philosophies:

- Catholic systemic schools are grouped into 11 geographical regions, and the Bishop of each Diocese is responsible for the administration of the schools in their region. This authority is exercised through the relevant Diocesan Catholic School Authority, which provides policy and practice support to schools. This can include providing policy to schools, and monitoring the implementation of policy.
- Independent schools, including Catholic Independent schools, are individually owned and operated. Each school, or small group of schools, is governed by a school board or management committee. The governing board or management committee is the key decision-maker and oversees the provision of education, staffing, financial management, and compliance.

11. The NSW Department of Education *Annual Report 2016* identifies 2,210 schools, comprising 1,608 primary schools, 401 secondary schools, 113 schools for specific purposes, 65 central/community schools, and 23 environmental education centres.

12. The Catholic Education Commission reports that there are 591 Catholic schools in NSW (submission to NSW Parliamentary Committee Inquiry into *Students with a disability or special needs in NSW schools*).

13. FTE = full time equivalent

14. The NSW Department of Education *Annual Report 2016* identifies 781,430 total full-time and part-time primary and secondary students.

15. The Catholic Education Commission reports that there are 258,775 students in Catholic schools in NSW (submission to NSW Parliamentary Committee Inquiry into *Students with a disability or special needs in NSW schools*).

16. The Catholic Education Commission reports that there are 19,810 teachers and 8,305 support staff in Catholic schools in NSW (submission to NSW Parliamentary Committee Inquiry into *Students with a disability or special needs in NSW schools*).

17. A 'system of non-government schools' as defined in the Education Act is a grouping of 20 or more schools (or, with the Minister's approval, 11-19 schools) that has been approved by the Minister to monitor compliance with the requirements for registration and, if appropriate, accreditation for the schools within that registration system.

1.4. Legal and policy context

Relevant legislation

The main legislation that is relevant to behaviour management in NSW schools is the *Education Act 1990*, disability discrimination legislation, work health and safety legislation, and the *Ombudsman Act 1974*.

Among other things, the Education Act emphasises the right of every child to receive an education, and the duty of NSW to ensure that every child receives an education of the highest quality.¹⁸ The Act identifies that every person involved in the administration of education for school-age children in NSW is to have regard (as far as is practicable and appropriate) to objects including, but not limited to, assisting each child to achieve his or her educational potential; mitigating educational disadvantages arising from economic, social, cultural and other causes; providing special educational assistance to children with disability; and providing an education for Aboriginal children that has regard to their special needs.¹⁹

The Education Act also provides for the registration and accreditation of non-government schools. The NSW Educational Standards Authority (NESA) oversees the compliance of schools according to the regulatory requirements, and is responsible for making recommendations regarding the registration and accreditation of non-government schools to the Minister. NESA also has responsibility for providing advice to the Minister and the Secretary of the department about the compliance of public schools with similar requirements to those that apply for the registration of non-government schools.

The *Disability Discrimination Act 1992* (Cth) prohibits discrimination in education on the basis of disability. The *Disability Standards for Education 2005* clarifies the obligations of education providers under the Disability Discrimination Act, including to provide 'reasonable adjustments' where needed (and in consultation with the student and/or their parents/carers) to ensure that a student with disability can access and participate in education on the same basis as their peers. The *Anti-Discrimination Act 1997* also applies to public schools, and makes it unlawful to discriminate on the grounds of disability and other characteristics.

The *Civil Liability Act 2002* defines principles that are relevant to the common law duty of care of government and non-government schools to take steps to prevent risk of harm to students where the risk is foreseeable, significant and where (having regard to the circumstances) a reasonable person would have taken those precautions. Generally schools have a duty of care to take reasonable care to prevent students from injuring themselves, injuring others or damaging property.

Under the *Work Health and Safety Act 2011*, government and non-government schools have a duty of care to their students, staff and visitors to school sites to ensure, as far as is reasonably practicable, their health and safety under the Act. Employees are required under the Act to comply with reasonable instructions by the employer to allow it to comply with the Act and to cooperate with any reasonable policy relating to health and safety at the workplace.

Under the Ombudsman Act, any person can complain to the NSW Ombudsman about the conduct of the department and other public authorities. However, our general complaint jurisdiction under the Ombudsman Act does not extend to non-government schools. In addition, Part 3A of the Act requires designated government and non-government agencies, including schools, to notify the Ombudsman about allegations of reportable conduct against employees. Reportable conduct includes any sexual offence, or sexual misconduct, committed against, with or in the presence of a child;²⁰ or any assault, ill-treatment or neglect of a child; or any behaviour that causes psychological harm to a child.²¹

18. Education Act 1990, section 4.

19. Education Act 1990, section 6.

20. Including a child pornography offence or an offence involving child abuse material.

21. Whether or not, in any case, with the consent of the child.

Relevant policies

National policy framework

The 2008 *Melbourne Declaration on Educational Goals for Young Australians* includes two goals: 1) Australian schooling promotes equity and excellence; and 2) all young Australians become: successful learners; confident and creative individuals; and active and informed citizens.

In relation to the latter goal, the Melbourne Declaration, inter alia, states that schools should help students to: have a sense of self-worth, self-awareness and personal identity that enables them to manage their emotional, mental, spiritual and physical wellbeing; have a sense of optimism about their lives and the future; develop personal values and attributes such as honesty, resilience, empathy and respect for others; relate well to others and form and maintain healthy relationships; be well prepared for their potential life roles as family, community and workforce members; and embrace opportunities, make rational and informed decisions about their own lives and accept responsibility for their own actions.

The Melbourne Declaration provides the policy framework for the *Australian Curriculum*, which sets consistent national standards to improve learning outcomes for all students. The 'Personal and social capability' involves students in a range of practices 'including recognising and regulating emotions, developing empathy for others and understanding relationships, establishing and building positive relationships, making responsible decisions, working effectively in teams, handling challenging situations constructively and developing leadership skills.'²²

The *National Safe Schools Framework* (as part of a broader *Student Resilience and Wellbeing Policy*) includes a set of guiding principles to help school communities to develop positive and practical student safety and wellbeing policies. Key elements of the framework include leadership commitment to a safe school; a supportive and connected school culture; positive behaviour management; early intervention and targeted support; and partnerships with families and community.

NSW policy framework

Government and non-government schools are required to have and implement policies and procedures in a range of operational and curriculum areas, including the provision of a safe and supportive environment, and discipline.

Department of Education

In relation to behaviour management in public schools, key policy frameworks and other guidance include, among other things:

- The *Wellbeing Framework for Schools* (2015) requires schools to have a planned approach to support the wellbeing of all students. The framework is pro-social and strengths-based, and assists schools to strengthen students' cognitive, physical, social, emotional and spiritual development. The framework identifies that educators need to understand the potential wellbeing has to bring about positive change, what is required to foster wellbeing, and how it can become a powerful force in students' learning and development, and states that student wellbeing is 'enhanced when schools connect with and draw on the expertise, contribution and support of their communities.'²³
- The *Student Welfare Policy* provides a framework for school communities to review student welfare, including discipline; determine key issues for action; and develop and implement student welfare actions and the school discipline policy. The department has advised that planning is underway to review this policy.
- The *Student Discipline in Government Schools Policy*, among other things, identifies that schools must have a school discipline policy which is developed in consultation with school community members. The policy must contain four components: 1) the discipline code or school rules; 2) strategies and practices to promote positive student behaviour, including specific measures to maintain a climate of respect; 3) strategies and practices to recognise and reinforce student achievement; and 4) strategies and practices to manage inappropriate student behaviour. The department has advised that work is underway to review this policy consistent with the Wellbeing Framework for Schools.

22. Australian Curriculum, Personal and social capability <http://www.australiancurriculum.edu.au/generalcapabilities/personal-and-social-capability/introduction/introduction>

23. Department of Education (April 2015) *The Wellbeing Framework for Schools*, p2.

- The *Work Health and Safety Policy* outlines work health and safety requirements, and includes the department's commitment to the reporting of incidents so that action can be taken to manage the incident, prevent further incidents, and provide support where required.

The department also has procedures in relation to suspensions and expulsions; and guidelines in relation to the use of time-out strategies, including dedicated time-out rooms; and has Legal Issues Bulletins in relation to student discipline, and physical restraint. Further details in relation to these guiding documents are provided in the body of this report.

Non-government schools

The policy and procedure requirements for registration that are most relevant to behaviour management in schools relate to the provision of a safe and supportive environment, and discipline.

As evidence of compliance that it meets the requirements relating to providing a safe and supportive environment, a registered non-government school must have in place and implement policies and procedures in relation to (among other things):

- codes of conduct for members of the school community, with specific reference to behaviour management, and
- complaints or grievances, with specific reference to processes for raising and responding to matters of concern identified by students and/or parents.

In relation to discipline, a registered non-government school is required to have in place and implement policies related to the discipline of students, including but not limited to the suspension, expulsion and exclusion of students, which are based on procedural fairness.

As part of our inquiry, we reviewed the policies, procedures and other guidance of 53 non-government schools in relation to:

- student discipline
- behaviour management
- use of time-out strategies (such as time-out rooms)
- use of restraint
- suspensions and expulsions, and
- complaints.

Consistent with the diversity of the non-government education sectors, there was a wide variety in the information provided by the selected schools. We assessed the policies, procedures, and other guidance against audit criteria, which included the registration requirements and elements of good practice. We assessed the guidance against each of the criteria, recording 'Yes' (as evidence provided), 'No', or 'Some evidence provided'. The results of our assessment are included in the body of this report.

Chapter 2. Managing behaviour in schools

2.1. Positive behaviour support

Student behaviour does not exist in isolation – it is influenced by a wide range of internal and external factors, and responsibility for behaviour should not be fully located with students.

Good practice in supporting student behaviour involves a preventive, student-centred, and positive approach. As an ACT expert panel observed after a recent inquiry:

‘When discussing challenging behaviour, the starting point, and the priority for investment, should be on positive behaviour support and evidence based targeted interventions to meet individual needs. This is established best practice, and is a preventive approach.’²⁴

The ACT expert panel identified key components of a proactive and student-centred approach to students with complex needs and challenging behaviour, which are applicable to every student, and which ‘extensive research has shown will significantly reduce but not eliminate the need for reactive measures’,²⁵ including, among other things:²⁶

- **Identifying individual needs** – recognising the specific needs of each student in their family, peer and community contexts. Responses to student behaviour should take into account that behaviour is affected by contexts and environments; and as each behaviour may indicate different causes, each requires a specific, personalised response.
- **Giving priority to relationships** – where teachers have high academic expectations and have caring and respectful relationships with students, there are notably fewer discipline problems and lower suspension rates. Supportive relationships are critical for students with complex needs and challenging behaviour; it is important that students know that teachers and other staff care about and value them as an individual.
- **Fostering wellbeing and demonstrating in practice the links between wellbeing, learning and behaviour** – growth in wellbeing and in academic attainment are mutually supportive and produce positive long-term outcomes.
- **Personalising learning and using distinct pedagogies when students need them** – ‘the most effective classroom managers do not treat students the same but employ different strategies in response to their individual behavioural needs’;²⁷ some students require individualised approaches and strategies.
- **Teaching to engage and support behaviour**
- **Teaching social and emotional skills** – such as creativity, motivation, communication skills and persistence.
- **Focusing on prevention and proactive approaches** – includes proactively identifying problems at an early stage and working to address them before students become disengaged. Measures taken to protect safety must include preventive approaches and be consistent with the human rights of children and young people.
- **Collaborating at all levels** – some students will require specialised expertise and wrap-around supports. Collaboration and a team approach within the school and with partners outside the school on complex needs is required to meet the broad psychosocial needs of children and reduce behaviours.

Many of these elements are already prominent in policy and practice in NSW schools.

24. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour, op cit, p151.

25. Ibid, p61.

26. Ibid, pp62–69.

27. Ibid, p64.

The department's policy approach to discipline and behaviour management in public schools is premised on a positive approach. That is, the policy focus is on practices that seek to promote positive student behaviour, such as engagement in learning and pro-social behaviour, rather than on punishment. Key policies and guidance for public schools are consistent with the above components, including requirements to have a planned approach to support the wellbeing of all students under the Wellbeing Framework for Schools; and expectations and guidance relating to personalised learning and support, and supporting the behaviour needs of students. In our consultations, we received positive feedback from principals about the introduction of the Wellbeing Framework across the department, advising that this has been a welcome development.

Identifying and addressing the learning and support needs of individual students with additional needs is an important aspect of positive behaviour support – and is vital for students with complex needs and challenging behaviour. The department provides useful guidance on personalised learning and support, based on the four key elements of:

- *rigorous and holistic assessment of the individual education needs of the student* – informed by analysis of data
- *provision of personalised adjustments or support to meet student's assessed needs*
- *regular monitoring and review of the impact of the adjustment or support being provided* – with adaptations or changes where needed, to continue to meet the assessed needs of the student, and
- *consultation and collaboration with teachers, parents, support staff and outside agencies/other professionals where required.*

There are particular personalised planning requirements that apply to Aboriginal students (Personalised Learning Pathway),²⁸ and students in OOHC (individual education plan) in public schools.²⁹ Both are focused on the development of a plan to address the learning and support needs of the students, in partnership with the student and other parties. The individual education plan is to be developed within 30 days of the school being advised of a student entering statutory OOHC.

From some of the Independent schools, we heard that the assistance they obtain from the Association of Independent Schools of NSW (AISNSW) includes information and resources on positive behaviour support. The information provided to us by the AISNSW regarding the advice it provides to non-government schools is consistent with positive behaviour support and a student-centred approach – including that it encourages schools to understand that effective behaviour support is underpinned by strong teacher/student relationships and supportive, trusting relationships with parents and carers; and that all behaviour serves a communicative function.

Our review of the policy, procedure or other guidance in selected non-government schools in relation to behaviour support identified that, while two-thirds (69%) have a code of conduct for members of the school community, less than half (40%) make specific reference in the code of conduct to behaviour management.

In relation to overall policy, procedures or other guidance in relation to behaviour management, we found that:

- two-thirds (69%) provide guidance that promotes a positive approach to behaviour management
- the majority (90%) outline a framework for developing, monitoring and evaluating behaviour management strategies
- three-quarters (77%) indicate that the development of behaviour plans/strategies occurs in collaboration with the student, family, and relevant professionals, and
- most (86%) identify systems for identifying, responding to, and monitoring students at risk.

28. The department recommends that all Aboriginal students have a Personalised Learning Pathway, previously known as a Personalised Learning Plan, developed in partnership with the student, parents/carers, and teachers, that is tailored to the student and regularly reviewed and updated.

29. The department's *Out of Home Care in Government Schools Policy* requires schools to collaborate with caseworkers and other stakeholders to develop an individual education plan for every student in statutory OOHC. Among other things, the education plan should identify the child's academic, social, behavioural, emotional, and wellbeing needs; and the strategies for achieving the identified outcomes for the student and what is needed to achieve them.

However, in most cases, the policies or other guidance did not refer to students with disability or additional support needs, and unproductive behaviour was predominantly identified as disobedience or a lack of maturity/self-discipline. In this context, it would be easy for schools to unfairly respond to students with disability from a discipline perspective.

From our inquiry, we witnessed and heard about many good practice examples of how government and non-government schools are implementing positive behaviour support, including (but not limited to):

- At Rooty Hill High School, staff take a proactive approach to identifying needs at an early point, including ensuring that all students have a personalised learning and goal-setting interview with their Year Advisor or member of the support team each semester to discuss their goals and interests, which informs the ongoing development of a personalised learning plan. Staff identify students who are at 'high risk', and ensure that they have consistent contact with their Year Advisor.
- Coreen School provided examples of work that staff do to engage with students before they start at the school, including meeting them offsite in the community, and identifying which staff will suit them.
- Rowland Hassall School has introduced positive psychology, which includes a focus on building on strengths rather than focusing on deficits. The school has also introduced mindfulness, which they report has a 95% take-up rate by students, and has resulted in reduced suspensions and increased attendance.
- Heritage Christian School does a 'heat map' – a data-driven, global picture of the students – and identifies the children who are 'at risk' or who otherwise need personalised support.
- A range of schools told us about the work they do with students to teach social and emotional skills; and how they proactively use the results of the 'Tell Them From Me' student survey to better engage and meet the needs of students.

Despite these types of initiatives, stakeholders raised concerns in our consultations about the extent to which practice in schools is in line with policy requirements and expectations in relation to positive behaviour support. In particular, we heard concerns that the focus in schools tends to be on the student's behaviour, rather than on actions to identify the underlying cause, and what the student is trying to communicate. We also heard concerns that some of the policies and other guidance are heavily weighted towards managing behaviour in the context of work health and safety risks, rather than positive behaviour support.

We heard from residential OOHc providers that students in residential OOHc do not consistently have an individualised education plan as required, despite existing need. They also told us that it is important that the plan is informed by a comprehensive assessment to determine the child's learning and support needs and to establish a baseline for support needs; however, it is not always evident that school staff have the necessary skills to undertake the assessment.

A range of stakeholders, including residential OOHc providers, also emphasised the need for an increased focus in schools on a trauma-informed approach to learning and support. We note that research and guidance³⁰ on trauma-sensitive and trauma-informed approaches to supporting students identifies the importance of many of the previously-listed components of a proactive and student-centred approach to students with complex needs and challenging behaviour. Among other things, it includes relationship-based practices (building key supportive relationships between students who have experienced trauma and teachers/other school staff); fostering a sense of predictability; and providing support and strategies for students who have experienced trauma to shape their emotional reactions. 'In practice, this may include: setting clear boundaries and predictable consequences; ensuring routine and predictability in the classroom; focusing activities on building social and emotional literacy; rewarding positive choices, and creating safe spaces that allow children to be calm.'³¹ In the main, the practices are consistent with positive behaviour support, and the Positive Behaviour for Learning framework.

30. For example, Australian Childhood Foundation (2010) *Making Space for Learning: Trauma Informed Practice in Schools*; Victorian Child Safety Commissioner (2007) *Calmer classrooms: A guide to working with traumatised children*; and Trauma and Learning Policy Initiative, *Helping Traumatized Children Learn: Six Attributes of a Trauma-Sensitive School* (<https://traumasensitiveschools.org/trauma-and-learning/the-solution-trauma-sensitive-schools/>)

31. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour, op cit, p195.

Information in the later sections of this report, on responding to behaviours of concern, indicates that there are gaps between policy and practice in schools in relation to behaviour support, and that the impact on affected students – often those with complex needs and challenging behaviour – is significant. In our view, there are opportunities to build on the useful frameworks that exist in relation to behaviour support, to better deliver the intended outcomes – including building in additional rigour at key points, and improving oversight. Some of the current work activities of the department provide valuable opportunities for addressing these aspects.

2.2. The Positive Behaviour for Learning framework

Positive Behaviour for Learning (PBL)³² is a multi-tiered prevention-based framework that is widely used in schools in Australia and internationally. It is based on three main components: 1) prevention and early intervention, 2) multi-tiered support, and 3) data-based decision making.

PBL promotes an ‘explicit, structured, team-based, problem solving process for developing schools’ capacities to assess and address behaviour issues’.³³ The goal is to increase equity through access to learning for all students, including those who present with challenging behaviours. In linking academic success and social skills, the framework recognises the function of behaviour, and is predicated on the assumption that replacement behaviours, more conducive to learning, can be learnt. Rather than labelling children or seeing behaviour as static, the focus is on the systemic or environmental factors that reinforce problematic behaviour.

The framework acknowledges that the majority of students will receive sufficient support for learning through a combination of effective academic and social instruction, and a suite of universal strategies that redirect behaviour towards that which is more conducive to learning. There will also be a small number of students whose support needs require more personalised targeted and intensive intervention. Interventions, informed by functional analysis of behaviour, shift the response from one of consequences for non-compliance to that of providing the support required to participate in learning.

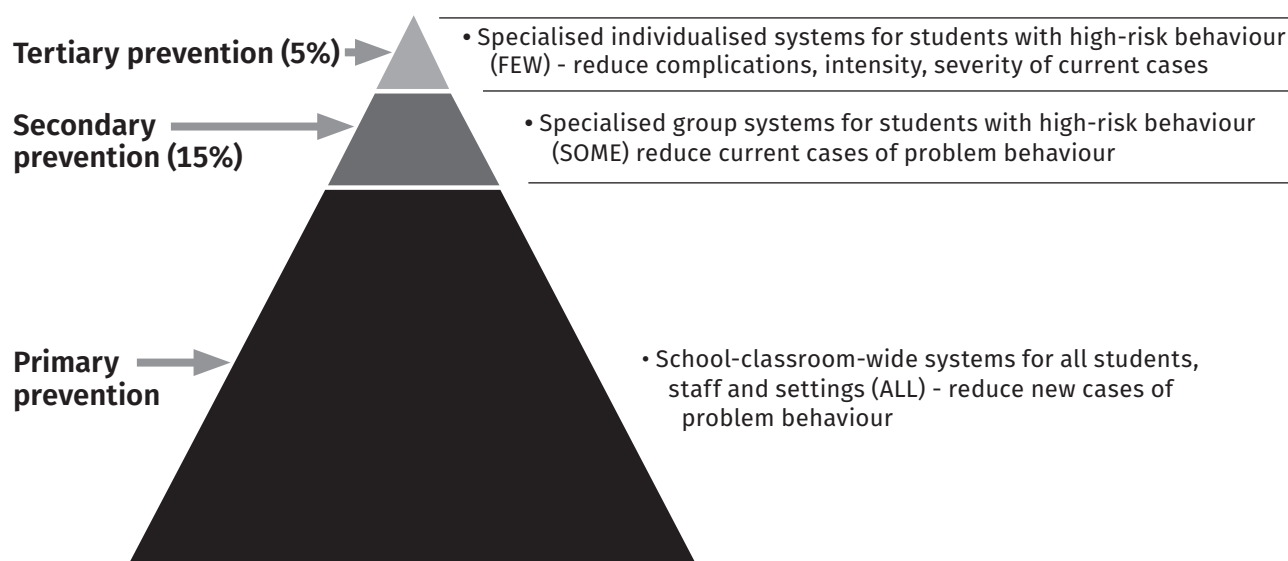
The framework endorses the use of data to efficiently and effectively identify students who are at risk of failure or disengagement. The framework also acknowledges the importance of whole-school approaches that promote consistency and equity and provide the systemic structures necessary to support and sustain change.

The best practice elements of the PBL framework include:

1. Data-informed systems and practice, including interventions and evaluation processes.
2. A tiered or graduated approach that seeks to create environments conducive to learning by promoting functional behaviour and responding proportionately to counterproductive behaviour.
 - Tier 1 (Primary prevention): Universal strategies that promote environments that are conducive to learning for all students (including those with additional support requirements), and reduce the effects of problematic behaviour on student outcomes and the school community as a whole.
 - Tier 2 (Secondary level prevention): Targeted interventions for those who are not responsive to universal strategies. Data collected about behaviour is critical in determining which students need Tier 2 interventions. Depending on the identified patterns of behaviour, additional attention may be needed to reinforce particular behaviours or to improve teaching strategies and relationships with these students.
 - Tier 3 (Tertiary level prevention): Intensive individualised interventions, driven by formal functional behaviour assessment, for those who have not responded to targeted intervention. At this stage, a collaborative approach with parents/carers, the school psychologist, and other professionals is required. A behaviour support plan should be developed and include strategies to develop more appropriate behaviours, and modification to the school environment and routines.

32. PBL is known in other jurisdictions as ‘School-wide Positive Behaviour Supports’, and ‘Positive Behavioural Interventions and Supports’.

33. OSEP Center on Positive Behavioral Interventions and Supports (2006) *What is School-Wide PBIS?* Eugene OR: University of Oregon., quoted in University of Western Sydney (March 2008) *Positive Behaviour for Learning: Investigating the transfer of a United States system into the New South Wales Department of Education and Training Western Sydney Region schools*, p3.

Figure 1: Three-tiered continuum of positive behaviour support in PBL

1. Explicit and effective academic and social instruction that includes applied behaviour analysis.
2. Visible and active leadership of whole-school implementation and review of evidence-based systems and practices designed to maximise student engagement and support learning.
3. Engagement of, and partnership with, families in promoting behaviour that is conducive to learning.

PBL has been found to be effective for students who display externalising behaviour (such as disruptive behaviours and aggression), and those with internalising behaviour (such as depression, social withdrawal and anxiety). Extensive research on PBL has shown positive effects on behaviour across all ages and grades.

PBL in NSW schools

PBL started in NSW public schools in 2005 as an initiative of the department's (then) Western Sydney region. In 2008, an evaluation of the introduction of PBL in that region by the University of Western Sydney found that it had made 'significant positive changes' to the capacity of public schools in Western Sydney to respond effectively to students' behaviour.³⁴

To date, the framework has been implemented in individual schools across NSW. As at 20 March 2017, there were 1,083 NSW public schools (50%) implementing PBL, comprising:

- 770 mainstream primary schools (48%)
- 223 mainstream secondary schools (60%)
- 53 SSPs (48%)
- 37 central schools (57%)

In 2015, the department established PBL teams in its Educational Services teams to support schools implementing the framework.³⁵ The PBL positions in the Educational Services teams provide direct ongoing support to schools, including (but not limited to) coaching support for school staff; helping schools to develop and deliver tailored professional learning; advising on the use of data for effective decision-making; facilitating the sharing of implementation practices and resources across school communities and/or principal networks; and building the capacity and behavioural expertise of school coaches through professional training and mentoring support.

34. University of Western Sydney (March 2008) *Positive Behaviour for Learning: Investigating the transfer of a United States system into the New South Wales Department of Education and Training Western Sydney Region schools*, page v.

35. Department of Education *Annual Report 2016*

Since July 2016, the department has allocated \$15 million of additional funding over three years to fund 36 dedicated positions to support the implementation of PBL in public schools in NSW. The department has advised that it will carefully monitor PBL over the next two years, to examine (among other things) the extent to which it makes a difference; and how greater flexibility in the delivery of the framework may be achieved, noting that it is premised on being implemented with fidelity.³⁶

The department has advised that NSW is the Australian jurisdiction that is most connected to PBL; has good links to the expert practitioners in the United States; and has been approached by other states/territories to provide assistance.

In our consultations, the awareness of, and support for, PBL was generally strong. We visited schools that are clearly passionate and committed to the framework and practice of PBL, and are dedicated to implementing the framework with fidelity. We saw evidence of the data they collect and analyse to drive decision-making regarding: the effectiveness of existing strategies; the areas of the school and cohorts of students who require a more targeted approach; and the individual students who require targeted and/or intensive interventions.

Claymore Public School demonstrated a strong commitment to PBL and, at the time of our visit, had recently been assessed on its compliance with the framework via a Tiered Fidelity Inventory. Following a change of principal in 2012, the school ramped up its PBL systems and implementation, and now reports significant buy-in by staff and strong awareness by the school community. The school recently accessed additional training in PBL and has started implementing 'Classroom Problem Solving', with a graduated approach to addressing behaviour through a) the use of a checklist for staff to review classroom incidents and reflect on their own practice/undertake a self-assessment; b) (if needed) undertaking a functional behaviour assessment, and developing, implementing and monitoring specific strategies; and c) (if needed) referral to an Advanced Tier – an executive member of staff with additional expertise.

Claymore Public School and some of the other schools we visited have an in-house PBL coach to help drive the framework in the school and up-skill staff; we noted cooperative arrangements between some schools in which their PBL coaches examine and provide feedback on PBL practice in the other school and share ideas and successful strategies.

While the extent of the take-up of PBL in non-government schools is not known, our review of the policies, procedures or other guidance in selected non-government schools in relation to behaviour management identified that 29% of the schools made reference to PBL. In our consultations, we saw, and received information about, practice in non-government schools that is consistent with the PBL framework. The Catholic Education Commission advised that PBL is used by Catholic schools, and that some of the Catholic Dioceses provide support to their schools in relation to PBL, including face-to-face support. AISNSW advised that its consultants provide guidance on the implementation of PBL, including explicit coaching on Tier 1 classroom strategies; assistance to analyse data relating to student behaviour; and support with targeted and intensive individualised interventions, including undertaking functional behaviour assessments and providing assistance to develop behaviour plans. CSA advised that it is gathering data on schools that are using the PBL framework, with a view to piloting it in CSA schools, along with possible training in the functional behaviour analysis process.

In our consultations, we received feedback from principals that PBL is a useful model that allows schools to clearly communicate expectations regarding behaviour, but that:

- it is adversely affected by staff turnover, making it difficult to sustain implementation fidelity
- there needs to be greater flexibility in the framework to suit individual schools, and
- it takes too long to work through all of the tiers/levels.

In relation to the last point, we heard from a number of principals in public schools that PBL takes too long to get to the students with challenging behaviours; it doesn't address the 'pointy end of the triangle'. In this regard, we recognise that PBL is based on a tiered and graduated approach, which requires schools to bed down the universal strategies in Tier 1 to provide a strong base for Tiers 2 and 3. However, some of the feedback from principals about PBL raises questions about whether some schools may be unnecessarily

36. NSW Ombudsman meeting with Department of Education representatives, 23 May 2017.

delaying action to undertake targeted and individualised work with students with complex needs and challenging behaviour because they have not spent the requisite time in Tier 1.

We also received feedback from principals in public schools about PBL that contrasted with the direct experience and feedback of other principals in public schools, including that PBL doesn't work well in a secondary school context, and it isn't suited to smaller schools.

We heard from other stakeholders that there is a need to increase the quality control and scrutiny of PBL implementation, so that when schools say they are 'PBL schools', there is an expected standard of practice that is being met. In this regard, some stakeholders told us that they have seen practice in some of the stated PBL schools that appears to be inconsistent with the framework, including students on 'constant suspensions', and a focus on a consequential reactive approach rather than preventive and positive behaviour support.

The increased number of PBL positions employed by the department provides an opportunity to take a closer look at PBL practice in public schools, including the work that is being done in relation to students who require intensive and individualised interventions (including functional behaviour analysis), and to increase the knowledge base and challenge some of the assumptions or perceptions of principals regarding how PBL works.

There are also some useful opportunities to build on existing leading practice, and to share examples and provide practical support across schools. Identifying and accessing good practice information and assistance in relation to behaviour support is discussed in a later section of this report.

Functional behaviour analysis

Functional behaviour analysis (FBA) is the primary assessment method in PBL for students requiring intensive individual intervention for challenging behaviour (Tier 3).³⁷ It involves gathering relevant and specific data to determine why a particular behaviour occurs in a given context, in order to develop and implement appropriate interventions.

In the US, FBA has become a federally legislated requirement – it must be undertaken when a student's behaviour has resulted in a change of placement (and where it is determined that the behaviour was a manifestation of the child's disability), including a suspension of more than 10 days, where no current behaviour intervention plan existed.

In complaints to our office, we have identified matters where students have been suspended or had other adverse action taken in response to their behaviour (such as part day attendance), and where a comprehensive FBA did not appear to have been undertaken. In some cases, the teacher or assistant principal had completed the department's student behaviour analysis and prompt sheet; however, it did not appear that people with relevant expertise (such as a psychologist) had been engaged to do a thorough behaviour assessment.

In our consultations, a range of stakeholders spoke to the issue of the adequacy and quality of the work done in schools to assess functional behaviour and to develop a useful behaviour plan with evidence-based strategies. We heard views that, while FBAs should be undertaken by people who have the technical know-how, this is not typically the case in schools. We also heard from principals that schools want and need training in undertaking FBAs, but this is not currently available and there is no readily identifiable source of this assistance. Some stakeholders told us that the Personalised Learning and Support Signposting Tool (PLASST)³⁸ is the department's functional assessment, but it does not provide the same depth as an FBA. We also heard views that the tool is very good, but it is optional and isn't always used by schools when circumstances warrant it. The department has advised that the PLASST is designed as a 'general purpose' tool that is not designed nor promoted as a comprehensive diagnostic tool that could be used as the primary basis for FBA (although a student profile using the PLASST could inform or contribute to an FBA).³⁹

37. O'Neill, S., & Stephenson, J., 'The use of Functional Behavioural Assessment for students with challenging behaviours: Current patterns and experience of Australian practitioners' in *Australian Journal of Educational & Developmental Psychology*, Vol 10, 2010, pp65–82

38. The PLASST is a web-based tool designed by the department to help teachers and learning and support teams to identify the functional educational needs of students who may benefit from personalised learning and support. It generates a student profile report for an individual student which highlights the relative strengths and needs of the student and where they may benefit from adjustments or support (see <https://education.nsw.gov.au/disability-learning-and-support/resources/plasst>).

39. Department of Education response to the NSW Ombudsman draft report, 28 July 2017.

Intensive individualised interventions are critical for a small subset of students, including those with complex needs and challenging behaviour. This level of intervention signals that the student's behaviour has not improved in response to universal and targeted strategies, and a more individualised approach is required. At this point, there is a high likelihood that adverse actions, such as suspension, have been taken or are being considered in response to the student's behaviour. Given the seriousness of the situation, it is imperative that there is a comprehensive and rigorous approach – involving functional behaviour analysis – informed by appropriate expertise.

2.3. The importance of leadership and culture

Across all consultations, and through our complaints and reportable conduct functions, we have received a strong and consistent message that school leadership and culture makes a critical difference – to the prevention of, and response to, challenging behaviour; to the inclusion or otherwise of students with disability and additional support needs; and more broadly.

In complaints to our office, and in our consultations for the inquiry, we have received considerable information about significant changes that have resulted from a change in principal – both positive and negative. This has included examples where:

- the family of a student with disability received a letter shortly after a relieving principal commenced, advising that the student would not be able to return to school until perceived health-related issues were resolved
- a change in principal at an SSP was reportedly associated with a spike in suspensions and expulsions
- substantial and longstanding systemic issues relating to staff culture, use of restrictive practices, and reportable conduct were addressed following the start of a new principal, and
- after a new principal re-booted PBL in a school, there was increased commitment and buy-in by staff to this approach.

In our consultations with parents of students with disability, some have shared similar examples, including notable improvements in student engagement and wellbeing, and inclusion of the student in the school, following a change in school and/or leadership. The importance of school leadership on the experience and outcomes of students overall, and particularly those who require additional support, cannot be overstated. From our consultations, we have been consistently and repeatedly advised that principals set the tone and culture for the school, and their attitude and views as to what is important and valued flow through the school community. Perhaps the most significant feedback we have received from our consultations is that it is the leaders who demonstrate support for, and strong commitment to, inclusion who provide a solid platform for broader cultural change.

As mentioned earlier, research has shown that the relationship between teachers/school staff and students is vital, including that positive, caring, and respectful relationships with students make a critical difference in reducing problem behaviours. This was a strong message in our consultations, and was voiced by many of the schools that had been identified as examples of positive practice in behaviour support. A range of principals and other stakeholders told us that a lot of positive behaviour support – and what works for students with complex needs and challenging behaviour and others – comes down to respect.

We repeatedly heard that what works for students with complex needs and challenging behaviour is the student's relationship with the teacher and other school staff. Residential care providers reinforced this message, advising that, where students in residential OOH see that someone in the school cares about them as an individual, it makes a significant difference for the student, and has positive effects across multiple domains, including their behaviour. This message has come through in many of the complaints to our office, including the following matter.

Case Study 1.

A student with ADHD and other additional needs had been suspended repeatedly from primary school, was excluded from sporting activities and excursions on the basis of his behaviour, and projected a view to his family that he was the problem. The family told us that when the student attended a school interstate for one term following the family's temporary relocation for a job opportunity, he excelled – there were no issues with his behaviour, he was a valued part of football and other sporting activities, and he had improved learning outcomes. When the student returned to the previous school, the cycle of suspensions resumed, and the family subsequently arranged for him to attend a different school for the remaining few months of Year 6.

Prior to commencing at a new school the following year, the student met with members of the school executive, including a deputy principal who had been identified as the key contact and mentor for the student. The family reported that the student's experience at the new school had been consistently positive, including no identified behaviours of concern. When the student's family asked him what had made the difference, he said that school staff 'care about me'.

Consistent with the above example, residential care providers told us that what works for students with complex needs and challenging behaviour is to have a staff member identified in the school who looks out for the student/acts as their mentor. They advised that, in some cases, deputy principals have been assigned with that role, and it has been effective for the student. Residential care providers also told us that they have seen good practice and positive outcomes where a teacher or member of the executive is assigned to provide support to students in OOHC. They provided an example of a school that has a teacher dedicated to the students in OOHC; the school has used funds to give a teacher a 0.3 release from class time to support this work, and providers have seen a good relationship and engagement between the teacher and the child as an individual.

We heard positive examples of mentoring programs in schools, involving careful matching of teachers/mentors to individual students, using data and other information the school has obtained about the student. Rooty Hill High School told us about the work they undertake at the 'front end' with students to enable them to identify options that may work best for the student. Among other things, the school has an online student survey, involving self-evaluation by individual students across a range of domains, including student interests. The survey is completed every six months prior to personalised learning interviews, starting at pre-enrolment where parents also contribute. This information helps the school to identify the right programs for students, and to link them in with activities that will support the student's participation and engagement.

We also heard from Rooty Hill High School and other schools about positive actions they have taken to remove the stigma about seeking help, and to provide support for those students who do seek help – including providing a separate learning space in which all students can obtain more intensive assistance with schoolwork, assessment tasks, and other matters.

A range of stakeholders also emphasised the importance of a school culture that enables and supports teachers and other staff to seek help without fear of adverse action or judgement about their abilities and skills.

Research backs up the consistent information we received from principals and other stakeholders about the importance of providing appropriate and adequate support to teachers. There is a lot that rides on individual teachers, and it can take significant energy and skills to manage the demands of challenging behaviour. We heard about proactive steps that have been taken in some schools to provide support to teachers, particularly those working with students with complex needs and challenging behaviour – including allocating mentors to staff; and having daily debriefing meetings that focus on the things that have gone well and that celebrate success. A range of schools, including learning centres, indicated that the attitude of staff to students with complex needs and challenging behaviour is key, including the ability of staff to manage their own behaviour, not overreact, and 'not feel that they have to win all the battles'.

We also heard, and have identified through our work, that too much depends on the quality and attitude of individuals – too much relies on a principal and other school leaders having a commitment to genuine inclusion, positive behaviour support, and evidence-based good practice. We appreciate that there will always be differences in principals and schools, taking into account the needs of their school community; and a diversity of views and approaches is beneficial. However, the consequences for students, school staff, and families can be significant where leadership beliefs, attitude, and practice do not match what is required and expected. The consistent information regarding substantial changes in practice and approach (and marked differences in support for individuals) from principal to principal raises significant questions about the adequacy of oversight and governance arrangements in schools.

Principals can have an immense impact on school culture and values – particularly in relation to the inclusion of students with disability, and broader support for students with complex needs and challenging behaviour, and they wield considerable power and decision-making authority, from the day to day operations, staffing, and allocation of resources in the school, to the handling and resolution of complaints (sometimes about their own decisions). Given the magnitude and impact of their role, there is merit in setting mandatory professional learning requirements for principals, and potentially for the broader school executive group (principals, deputy principals, and assistant principals). At a minimum, training on the Disability Standards for Education should be a requirement.

Chapter 3. Access to expertise

There is a range of ways schools can obtain assistance with students with complex needs and challenging behaviours. In the main, schools will draw on staff internally, such as in-school advisors, learning and support teams, and members of the executive. Schools also tend to have a second tier to access targeted supports, through regional or network teams that schools can draw on to gain advice and assistance, and/or professional associations or peak representative bodies. While schools can also seek assistance and expertise from external specialists, information identifies that this action is infrequently taken.

3.1. Public schools

The department has advised that public schools can draw on ‘the expertise of more than 4,000 school-based specialist positions across learning, behaviour, psychology and attendance who work daily with students with additional needs in learning and behaviour’,⁴⁰ The specialist school-based positions include learning and support teachers,⁴¹ assistant principals learning and support,⁴² school counsellors, school psychologists,⁴³ and senior psychologists education.⁴⁴

Relevant to public school-based supports, under the *Supported Students, Successful Students* initiative, the department is investing \$167.2 million in wellbeing services over five years, including \$80.7 million for 236 additional school counselling positions; \$8 million to provide over 500 graduate scholarships to boost the recruitment of school counsellors and other wellbeing positions; and \$51.5 million of flexible funding.

Part of the *Every Student, Every School* initiative in 2012 involved converting some of the specialist itinerant positions, such as the Itinerant Teacher Behaviour Support role, and increasing the school-based supports for students with additional learning and support needs through creating learning and support teachers.

In relation to non-school-based supports, the department has four Educational Services⁴⁵ teams available statewide that provide advice and guidance to schools in developing and implementing additional strategies to support the learning, wellbeing and behaviour of students. Among other things, the Educational Services teams:

- provide direct assistance to schools
- facilitate professional learning, including professional learning networks such as principal networks;⁴⁶ deliver and provide tutoring support for training modules; and deliver and facilitate tailored professional learning
- work with schools to develop local partnership projects with other agencies to address primary, secondary, and tertiary level behaviour supports for students⁴⁷

40. Department of Education, statement of information to NSW Ombudsman, 20 March 2017.

41. Learning and support teachers are based in over 2,000 regular public schools, and are an off-class position. Through the school’s learning and support team, the learning and support teachers provide direct assistance to students in regular classes with additional learning and support needs and their teachers. The role includes providing direct support, professional specialist advice, mentoring to classroom teachers, and working collaboratively with the teacher to undertake assessments, and to plan, implement, model, monitor, and evaluate teaching programs and personalised adjustments for learning.

42. There are currently 96 assistant principal learning and support positions in public schools. The assistant principals learning and support work collaboratively with schools to assist students with additional learning and support needs (including behaviour), and their teachers – including through individual advice and support, evidence-based programs to assist students, and professional learning for staff. The role includes providing specialist consultancy support to support classes in regular schools and SSPs; providing professional specialist advice and assistance to schools and the region; and liaising with regional specialist personnel to ensure coordinated delivery of support for students with additional learning and support needs.

43. The number of school counselling positions in public schools is increasing by 236 in 2016–2018, to 1,026 positions. School counsellors are qualified teachers who have a degree in psychology and post-graduate qualifications in school counselling. Among other things, they carry out cognitive, social, emotional, and behavioural assessment of students referred by the learning and support team, and report the results of assessments and interventions to parents and teachers.

44. There are currently 133 senior psychologist education positions, 20 of which were established in 2016. The positions coordinate and professionally supervise a team of school counsellors and psychologists, and support schools in more complex matters.

45. In 2017, the department renamed Educational Services as ‘School Services’.

46. Principal networks provide opportunities to improve knowledge on professional practice, to share resources, and receive updates on department policies and procedures.

47. The supports include, for example, the Child and Adolescent Mental Health Service, Autism Spectrum Australia, and Beyond Blue.

- plan for the provision of targeted specialist support services (through networked specialist centres)
- facilitate the access request process for special support provisions, including integration funding support, and placement in a specialist support class, specialist education setting, or distance education, and
- support schools in relation to complaints.

Educational Services teams include, among other things: learning and wellbeing officers,⁴⁸ advisors,⁴⁹ and coordinators⁵⁰; networked specialist centre facilitators;⁵¹ PBL teams; Aboriginal community liaison officers; and home school liaison officers.

The department's *Flowchart for student behaviour support plan* identifies that '[w]hen additional expertise, beyond the capacity of the school is required', schools should contact the Educational Services team or 'WHS Consultants' for advice.

3.2. Non-government schools

Non-government schools are incredibly diverse, and have a variable mix of school-based supports that can provide guidance and expertise in relation to students with complex needs and challenging behaviour – such as school counsellors, executive staff, and welfare teams.

In relation to non-school-based supports for Independent schools, the Student Services team in AISNSW works with member schools to help to address the needs of students who may require additional planning, support, and adjustments arising from factors such as disability, behaviour, and mental health concerns. In relation to students with complex needs and challenging behaviour, AISNSW consultants can provide assistance to, among other things, undertake functional behaviour assessments, develop behaviour plans, provide explicit modelling with feedback of proactive evidence-based adjustments to support student self-regulation, and guidance on implementing PBL.

In relation to Catholic systemic schools, each Diocese is a different size and has a different makeup of advisors. While Dioceses in metropolitan areas may have a mix of specialist advisors, regional areas may only have one generic advisor. Some of the Catholic Education Offices have specialists in relation to disability, behaviour management, and conflict management. The Catholic Education Commission advised that it works with independent Catholic schools to help to address the needs of students who may require additional or personalised support, and some of the Dioceses lead work in particular areas, such as adaptation of the department's Wellbeing Framework by Broken Bay Diocese, and assistance with functional behaviour analysis by Wollongong Diocese.

3.3. Feedback

For students with complex needs and challenging behaviour – where there can be tricky intersections and relationships between the behaviour and the student's disability, and/or trauma, and/or other significant issues – the work that is needed to identify and develop appropriately targeted and intensive individualised supports requires skills that would be uncommon among many school staff.

Against this background, as part of our consultations we sought advice about where schools go to for expert advice in relation to students with complex needs and challenging behaviour. In relation to public schools, we heard that school counsellors are valued, and the senior psychologists will be important assets. However, many stakeholders told us that there is limited expertise in relation to behaviour support, both in schools and in the Educational Services teams. We heard that:

- the previous Itinerant Teacher Behaviour Support roles were patchy, often inaccessible, available only for short periods, and the quality of the advice and assistance was highly dependent on the individual worker

48. There are 99 learning and wellbeing officer positions, which support the delivery of a range of learning and wellbeing services and programs.

49. There are 32 learning and wellbeing advisor positions, which coordinate and deliver services, programs and initiatives supporting learning and wellbeing.

50. There are 19 learning and wellbeing coordinator positions, which provide leadership, management and coordination of services, programs and initiatives supporting learning and wellbeing.

51. There are 22 networked specialist centre facilitator positions, which facilitate and manage local interagency coordination and service delivery, supporting schools, their students and families experiencing personal and environmental complexity.

- while there is now access to additional school-based assistance for learning and support, including teachers and assistant principals, the roles are generalist, may or may not have behaviour-related skills, and do not tend to have the expertise that is required for this cohort of students, and
- the Educational Services teams provide insufficient support and expertise.

We heard that there is a need for assistance that both: a) delivers appropriate expertise, and b) provides strategies that are practical for the school environment. In this regard, we note that stakeholders indicated that this has been a problem at various times in relation to assistance provided by behaviour clinicians from the disability sector, Itinerant Teachers, and staff from Educational Services teams. Stakeholders from schools, the disability sector, and other parties emphasised the need for expert assessment and guidance that delivers workable, evidence-based strategies that reflect a sound understanding of the school context.

We were told that an assistant principal learning and support from a school in one operational directorate had provided valuable behaviour advice to a different school in the same area, including classroom observations, a detailed report, and practical recommendations, and that more of these people are needed. However, multiple principals told us that they would not know which are the assistant principals learning and support who have the behaviour expertise that they could call on. We also heard from schools that there is a need for ongoing or longer-term involvement and assistance, rather than a one-off assessment or plan.

Residential OOHC providers told us that they rarely see the engagement by government or non-government schools of people or services with critical expertise in relation to behaviour (and other factors), despite the complexities involved with many of the students they support, and the multiple suspensions they had received. In relation to public schools, the OOHC providers told us that they do not tend to see the involvement of the Educational Services teams with the students in residential OOHC, and the turnover of staff in those teams every few years resulted in the loss of key relationships that had taken considerable work to cultivate. Principals also raised concerns with us that the ‘changing hats’ in the Educational Services teams had meant that the relationship between schools and the teams was not as strong as it could be, and Educational Services staff had not had sufficient opportunity to develop and hone their skills.

While it is evident that schools do a substantial amount of work with external services, drawing on external behaviour expertise appears to be uncommon and not routinely considered, despite gaps in access to this expertise within the school and Educational Services. Information from our consultations, and arising from reportable conduct matters and complaints, identifies that schools do not tend to seek external expertise in relation to students with complex needs and challenging behaviour – even in circumstances in which the school is taking action that is likely to adversely affect the student’s education, including suspensions and part day attendance; or is otherwise identifying that it cannot meet the student’s needs.

3.4. Identifying and accessing expertise across and outside schools

In addition to counselling service staff and senior psychologists, there are other staff working in schools who have qualifications and expertise in areas that are relevant to students with complex needs and challenging behaviour, including disability, mental health, and behaviour support.

In our consultations we heard that, while principals are aware of the skills of their staff, and there are opportunities for sharing this information – through principals’ networks and learning and support teacher network meetings; via Directors, Public Schools NSW; and informal mechanisms if asked – there is no central repository or resource that would enable principals or other school staff to identify potential sources of expertise across the school system(s).

Under *Every Student, Every School*, the department provided funds for ‘Special schools as centres of expertise’, to strengthen opportunities for schools with specialist expertise to collaborate, develop and share their knowledge across the school system, and between specialist and mainstream schools. Under this initiative, SSPs received funds to undertake projects in areas that included case management of students with high and complex support needs in health and/or behaviour and collaborative interagency practice to support students and their teachers.

Each project had to incorporate a networking strategy to build and share knowledge and expertise across schools. The department has reported that SSPs developed and implemented over 80 projects, and schools continue to share the knowledge and skills from projects through means such as principal network meetings, conferences, and professional learning seminars.

In our consultations, we heard from and met with some schools that identified useful work that was undertaken as part of the 'Special schools as centres of expertise' initiative, including a learning centre that indicated that they had used funds to up-skill its own staff and those in surrounding schools. More broadly, we heard that the initiative resulted in some excellent and constructive resources, including training packages. However, the information and resources that were developed as part of this initiative are not stored in a central place, and schools typically do not know what is available.

Principals provided us with examples of how they or their staff had worked with other schools to provide assistance in areas such as behaviour support – including the principal of a learning centre who had made arrangements with the principal of a mainstream school to provide assistance with functional behaviour assessments and broader behaviour support, and the principal of a metropolitan learning centre who had provided a staff member to a school in a rural area for a term to share skills and strategies. We also heard that schools are generally keen to share expertise and knowledge, but that:

- they are not resourced for this purpose
- there is insufficient release time to free up staff who have the additional skills/ expertise
- there need to be better and stronger linkages between mainstream schools and SSPs, and
- they could use funds to engage expertise from other schools, but they need to know what expertise is available and where.

The department told us that principals now have much greater flexibility and authority over how they use allocated funds to meet the needs of their students and school community – including using funds to release staff to provide or receive professional learning at other schools, and to engage external services. The department advised that some schools are using funding provided to them through the Resource Allocation Model (RAM)⁵² in creative ways, including partnering with other schools in operational directorates; however, it is still relatively early days in principals being able to use funds differently, and some principals have not yet seen what is possible.⁵³ In our consultations, we heard from a number of principals who indicated that funds provided to schools through the RAM methodology had provided more opportunities and had made a significant difference to their school. In one example, we heard that funds had been used to engage a disability early intervention service to sit on the school's learning and support team to provide advice and expertise. However, we also heard concerns from stakeholders from the disability sector that it is not always evident how the targeted funding component of the School Budget Allocation Report (SBAR) in relation to students with disability (Integration Funding Support)⁵⁴ has been used to address the learning and support needs of the individual students concerned.

We have seen a range of work done by school-based positions, such as classroom teachers, and assistant principals learning and support, in relation to students with complex needs and challenging behaviour. In some cases, this has included conducting a functional analysis, developing a behaviour plan and individual education plan, and conducting reviews of progress. However, it has not always been evident that all relevant expertise

52. The Resource Allocation Model (RAM) is a needs-based funding methodology that uses a base and loadings approach. There are three components of the model:

- There is a base school allocation that includes the core cost of educating each student and operating a school, and comprises the largest component of the model.
- The base is supplemented by equity loadings developed to support different types of student and school-based sources of need, comprising socio-economic background, Aboriginal background, English language proficiency, and low-level adjustment for disability (based on the number of students in regular classes with additional learning and support needs).
- In addition to the base and equity loadings, funding includes targeted (individual student) funding to enable schools to be responsive to those students with more complex learning and support needs. This component of the funding includes targeted funding for refugee students who have been enrolled for less than three years; newly arrived students who speak a language other than English as their first language and require intensive English language tuition; and students with moderate to high levels of adjustment for disability who access support through the Integration Funding Support Program.

53. NSW Ombudsman meeting with Department of Education representatives, 23 May 2017.

54. Students in regular classes with confirmed disability and who require moderate to high levels of adjustment access Integration Funding Support. Students who access this support must have essential educational needs that are directly related to their identified disability and where these needs cannot be met through the full range of school and local resources. Applications for Integrated Funding Support are through the Access Request process. Funding is for teacher or school learning support officer salaries only – approved uses include additional teacher time; additional school learning support officer time; teacher release; transfer of duty; and program coordination time. Principals have the responsibility for determining the most appropriate ways of using the annual total school funding to meet the identified learning and support needs of the targeted students. Adjustments supported through Integration Funding Support should be documented and regularly evaluated.

has been accessed to identify the cause of the behaviour and to develop strategies to seek to address or mitigate them, despite significant adverse action taken against the student – including repeated suspensions, part day attendance arrangements, and proposed enrolment in distance education. For example, in some matters involving students with disability, there had been no contact with the school counsellor (or other practitioner with appropriate expertise) to undertake a comprehensive functional behaviour assessment, and relevant expertise and advice had not been sought from disability services.

Given the serious and significant consequences and adverse outcomes for the child, all reasonable efforts should be made to enable students with complex needs and challenging behaviour to receive appropriate support at school, including obtaining expert advice where required.

3.5. Training and professional development

Since 2009, the department has progressively developed and implemented a suite of seven specialist, tutor-supported, online learning courses that assist teachers to understand and respond to the needs of students associated with factors such as autism, behaviour, and motor coordination. The department has advised that professional learning through its MyPL professional learning management system, and registered with NESA, includes:

- Understanding and Supporting Behaviour⁵⁵
- Understanding Autism Spectrum Disorder⁵⁶
- Inclusion of Students with Speech, Language and Communication Needs⁵⁷
- Understanding Personalised Learning and Support,⁵⁸ and
- Disability Standards for Education (two parts).⁵⁹

Other relevant training available to teachers in NSW public schools includes:

- Teaching Students who have Experienced Trauma – a registered course, delivered by members of the school counselling service
- Management of Actual or Potential Aggression (MAPA) training – a registered course delivered by accredited instructors, which enhances participant understanding and management of disruptive behaviour, and
- Youth Mental Health First Aid.

The Catholic Education Commission advised that Catholic systemic schools have access to the all of the above training, and most are doing the online training in Understanding and Supporting Behaviour offered by the department. We were advised that Non-violent Crisis Intervention (NCI) training (now MAPA training) has also been delivered in many Catholic SSPs.

The AISNSW advised that it supports member Independent schools in relation to behaviour through whole-of-school training in MAPA; professional learning to develop and implement positive classroom behaviour support strategies; and consultancy support that includes the development of behaviour support plans. We were advised that, in many cases, schools will commission MAPA training in response to a major behavioural incident.

The AISNSW also advised that it has consistently provided professional learning and in-school support on the Disability Discrimination Act and the Disability Standards for Education, with this professional learning revised annually to implement the collaborative planning process underpinning the Nationally Consistent Collection of Data for Students with Disability (NCCD).

55. Since 2009, 7,371 staff have done this training.

56. Since 2008, 9,867 staff have done this training.

57. Since 2010, 4,075 staff have done this training.

58. Since 2015, 1,786 staff have done this training.

59. In response to the report of the Audit Office of NSW, the department advised that more than 64,000 'Part 1' modules have been undertaken since 2013; and more than 16,900 'Part 2' modules have been undertaken since 2014.

In our consultations, while we received a range of views regarding the available training, all parties emphasised the benefits of practical, in-school training, with access to quality expertise when it is needed. In relation to students with complex needs and challenging behaviour, we heard about the importance of having a multifaceted approach to training and professional development, including the critical need to complement the online training with additional mentoring, coaching, and hands-on assistance.

We heard from principals and staff in learning centres that some of the important work in their schools relates to training staff in how to respond to the challenging behaviour of students, including controlling their own behaviour and response. We were advised that whether the staff member has a background in disability or behaviour support is not of central importance – it is the teacher’s attitude towards students with complex needs and challenging behaviour and their capacity and willingness to learn ‘at the coalface’ that are the critical factors. These schools told us that they provide intensive training and support to staff, and bring in additional specific training depending on the needs of the current cohort of students. We also heard positive examples of schools arranging professional development in their local network on key topics such as trauma informed care.

We note that a key part of the role of the learning and support teachers, assistant principals learning and support, and the learning and wellbeing staff in the Educational Services teams includes (to varying extents) the provision of direct instruction, mentoring, and professional learning to school staff. In the previous section, we noted the need to identify and share the skills of particular staff in schools who are ‘experts’ in their practice, to enable schools to readily source additional expertise when required. However, it is also important that staff in particular positions – including the learning and support teachers and assistant principals, and the learning and wellbeing roles in Educational Services teams – are appropriately skilled to provide the assistance that schools require in relation to students with complex needs and challenging behaviour. The staff in key positions that are designed to provide expert assistance and specialist consultancy to schools must have the requisite skill set to deliver it. In particular, there is a need to ensure that the specialist/advisory positions have higher-level skills in undertaking comprehensive functional behaviour assessments and developing behaviour plans with evidence-based strategies.

Research has shown that the most useful training source for professional development, and assessment instruments/methods, is that delivered by colleagues while on the job. Australian research has identified that collegial training and support is the preferred option for any future training and development in functional behaviour assessments.⁶⁰ The additional school counselling staff and senior psychologist positions may provide a useful opportunity to boost the skills of the other specialist/advisory roles.

In this regard, we note that the Audit Office of NSW’s report in May 2016 included recommendations aimed at increasing the professional learning of teachers in relation to students with disability – including encouraging more teachers to complete both modules of the disability standards training; and encouraging learning and support teachers to take up professional learning to improve their knowledge and skills in supporting students with disability. In response, the department indicated that it would develop a strategy to increase the numbers of staff undertaking training in the Disability Standards for Education; and would consider how to further promote and build on the participation of learning and support teachers in professional learning opportunities.⁶¹ We support actions to increase knowledge and expertise relating to students with disability. However, our work also points to the need to:

- identify professional learning that should be mandatory for particular roles, including principals and key specialist/advisory roles (such as learning and support teachers and assistant principals, and learning and wellbeing staff in Educational Services teams) – in our view, at a minimum this should include the Disability Standards for Education
- identify additional professional learning that may be required by staff currently in the specialist/advisory roles, such as targeted training in functional behaviour assessments and evidence-based strategies, and ‘coalface’ experience of working with existing specialist teachers, and
- ensure that training is consistently translated into practice.

60. O’Neill, S., & Stephenson, J., ‘The use of Functional Behavioural Assessment for students with challenging behaviours: Current patterns and experience of Australian practitioners’ in *Australian Journal of Educational & Developmental Psychology*, Vol 10, 2010, pp65–82.

61. In relation to disability-related professional learning, the department noted that more than 300 sponsorships had been provided to enable teachers to gain a Masters in special education, and more than 2,400 of the learning and support teachers had completed specialist professional learning courses in key areas of disability since 2012.

To build capacity and derive maximum benefit across schools in relation to students with complex needs and challenging behaviour, there is also a need to ensure that the department develops a carefully *planned* and *ongoing* strategy for:

- identifying those staff in schools who have particular expertise, and making best use of their skills across a range of schools, and
- identifying potential leaders in this area and providing them with professional learning and the experience of working with existing specialist teachers, so that, over time, the numbers of teachers with the expertise required is significantly expanded.

Chapter 4. Responding to behaviours of concern

4.1. Restrictive practices

Restrictive practices include practices or interventions that have the effect of restricting the rights or freedom of movement of a person, with the primary purpose of protecting the person or others from harm.⁶² Restrictive practices that feature in school settings can include physical restraint and seclusion of students (isolating a person on their own in a setting from which they are unable to leave).

There is an increasing focus in the disability sector on the need to reduce and eliminate the use of restrictive practices, and it has also been the subject of recent and current attention in relation to schools in Australian and international jurisdictions:

- In the disability sector, a *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* is currently in place, and broader work is underway to establish an NDIS Quality and Safeguards Commissioner, incorporating a Senior Practitioner, with functions aimed at reducing and eliminating the use of restrictive practices with NDIS participants.
- In late 2016, New Zealand banned the use of seclusion in its schools, and issued guidance on behaviour management to minimise physical restraint. Work in some Australian jurisdictions, including the ACT,⁶³ Queensland,⁶⁴ and Victoria,⁶⁵ has also identified the need for clearer guidance for schools on the use of restrictive practices, and better collection, analysis and reporting of relevant data.

There are a number of laws that are relevant to the use of restrictive practices in schools in NSW, including those relating to disability discrimination and work health and safety. However, there is no specific legislative framework regulating the use of restrictive practices, such as physical restraint or seclusion, in schools in NSW.

Seclusion and use of time-out rooms

Notifications to our office under the reportable conduct scheme have included situations in which students have been placed in a room by school staff and have been unable to leave due to the door(s) being locked. Case studies 2–5 provide examples of these notifications, and illustrate some of the significant issues.

Case Study 2.

We were notified of allegations relating to the use of a 'Reflection Room' (isolation room) in a school for specific purposes. School staff had allegedly been using the room for a number of years on an ad hoc basis for managing student behaviour, with no clear training, documentation, established practices, or supervision.

An investigation sustained the allegations that the school principal failed to exercise appropriate duty of care by not ensuring the safe and responsible use of the 'Reflection Room', including failure to:

- complete any updated risk analysis for the use of the Reflection Room
- ensure that proper operating policies and procedures for the use of the Reflection Room were developed and implemented
- ensure regular training of staff in the use of the Reflection Room
- ensure that placement in the room was time-limited, commensurate with the age of the student, presenting issue(s) at the time, and any other relevant safety and/or psychological issues for the student, and

62. Australian Government (2013) *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector* – definition modified to broaden beyond people with disability.

63. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour, op cit.

64. Deloitte Access Economics (February 2017) *Review of education for students with disability in Queensland state schools*.

65. Victoria Department of Education and Training (June 2017) *Policy Guidance Procedures and Resources for the Reduction and Elimination of Restraint and Seclusion in Victorian Government Schools*.

- ensure that students were appropriately supervised when locked alone in the room.

Information identified in the course of the investigation included that the use of the Reflection Room was not written into student plans/programs; supervision of students in the room was 'random'; there was no mechanism for identifying students who were unsuitable to be placed in the room (such as those who have a history of trauma); and staff lacked knowledge as to whether parents were aware of the use of the room.

Case Study 3.

We were notified of allegations that teachers at a primary school had restrained a student with autism and locked the child in a time-out room for an extended duration. During that time, the student reportedly wrapped an electrical cord around their neck, causing a red mark.

An investigation sustained the allegations, and identified broader issues relating to behaviour management in the school. The teachers restrained the student in the course of leaving the assembly hall as they were concerned that the child would possibly leave the school grounds. The student reportedly became agitated, hit at teachers, and was moved to the time-out room. The room was locked, and one of the teachers remained outside to monitor. A subsequent mental health assessment of the student noted that the child had tried to get the teachers' attention on numerous occasions to get out of the time-out room, but was ignored. The student was locked in the room for 1.5 hours.

The student had a behaviour plan in place that stated that the child was not to be restrained, and that when the student was in time-out they were to be checked after three minutes. The investigation identified that none of the teachers were aware that the student had a behaviour plan; and there were posters covering the windows of the time-out room.

We previously raised concerns with the department about the use of time-out rooms in 2004 and 2008. Among other things, we identified that time-out and isolation were actively used strategies to manage disruptive behaviour; there was a lack of central monitoring of the use of time-out rooms by the department; the maximum length of time a student could be placed in a time-out room varied considerably according to local policies; and supervision arrangements and record-keeping in relation to the use of time-out rooms were inadequate. We emphasised the need for department-wide parameters about the length of placements in a time-out room, the supervision and access arrangements, and the keeping of central records.

In 2011, the department released *Guidelines for the use of time-out strategies including dedicated time-out rooms*. The guidelines identify that 'time-out strategies' include isolation in the student's classroom, another teacher's room, or with an executive member of staff, or the use of a dedicated time-out room.

The guidelines position the use of time-out as a positive and proactive strategy to support self-calming and to provide an opportunity for students to reflect on their actions within a safe and predictable environment. The guidance makes it clear that time-out strategies are not to be used as punishment; must take into account factors such as the individual needs, disability and developmental level of the student; and should only be used 'for the minimum period of time necessary for the student to regain enough composure to be able to return safely to class'.

The guidelines provide specific guidance in relation to the use of a dedicated time-out room, including that it should only be used after less intrusive interventions have not succeeded in managing the behaviour; parents/carers must be notified every time the room is used with their child; and the use of the room should result in consideration of a referral/re-referral to the Learning Support Team to develop or refine a behaviour plan. For students with very complex needs who require specific, personalised learning and support, interventions, such as the ongoing use of a dedicated time-out room, may only be used after the involvement of a case management team, and with parent/carer consent and principal approval.

The guidelines outline conditions for the use of a dedicated time-out room, including that the use must be risk assessed in relation to student and staff safety; be conducive to de-escalating inappropriate behaviour; not be locked, latched, or secured in any way that would prevent staff or the student from exiting the room; and be supervised at all times. The principal is required to ensure that records are maintained in relation to the

use of the room (for each student, on each occasion); and a register is kept (recording the number of times the room has been used and the number of students involved) and sent to the Director, Public Schools NSW. The guidelines do not specify what comprises a 'dedicated time-out room', or refer to seclusion.

The guidelines provide useful information, and address a range of the concerns we had previously identified. However, the information from our examination of matters notified under the reportable conduct scheme, complaints to our office, and our discussions with schools, families and other stakeholders, identifies problems with the understanding and compliance of school staff with the guidelines; raises questions about the adequacy of the systems for monitoring practice; and identifies areas that need to be strengthened.

The department has advised that, in 2016, principals of 479 public schools (22%) reported that their school operates a time-out room or equivalent facility. Of these, 334 (70%) were primary schools, 83 (17%) were secondary schools, 48 (10%) were schools for specific purposes, and 14 (3%) were central schools. The department has emphasised that the data 'should be interpreted with caution as principals interpreted 'time out room or equivalent facility' in a range of ways, including but not limited to break-out spaces used for learning, sensory rooms accessed by students with disability and rooms utilised by schools to provide supervised learning for individual students causing disruption in the classroom'. The differing interpretations of time-out rooms by principals suggest that the guidelines are not sufficiently clear. In our consultations, principals expressed a view that the guidelines are 'a bit grey' in relation to what constitutes a dedicated time-out room. A range of principals indicated that they would like clearer parameters around what they can and can't do in relation to time-out.

We heard broad support for the use of time-out as a behaviour management strategy in schools. Time-out can be an effective strategy to assist students to regulate their behaviour, and a useful coping mechanism for those students who find it difficult to manage in the classroom at times for a range of reasons, including sensory overload. In particular, we heard consistent support for student-initiated time-out (or voluntary withdrawal), and saw evidence of schools providing mechanisms for students to signal and access time-out, including the use of 'cool choice' cards or similar. We witnessed a range of time-out spaces, including designated time-out rooms, and noted the different needs they meet, including students using them as a calm space for some respite from the main classroom and emotional regulation; as a quiet space to do schoolwork; and as a safe space to rest when dealing with medication changes and side-effects. Teacher-directed time-out was also identified as an important component in a hierarchy of responses to behaviours of concern – including time-out within the classroom, and in a 'buddy' classroom.

However, our work has identified a range of matters – including but not limited to case studies 2, 3 and 4 – in which time-out rooms (designated or otherwise) have been used in ways that are not consistent with the department's guidelines, and that comprise seclusion of individual students. Among other things, the information identifies issues that include:

- staff acting contrary to (or in the absence of) the student's behaviour plan
- staff locking students in a room, for extended periods of time
- lack of awareness, and inadequate training of staff in relation to policies, procedures, and personalised plans
- inadequate supervision of the student, and continuation of practices in which vision is obscured by posters on windows
- practices not being informed by assessment of risk or the needs of the student
- inadequate communication with families about the use of practices, and
- lack of evidence of trying less restrictive options, undertaking reviews, or seeking assistance via learning and support or case management teams.

We also heard and received complaints about practices used in schools that are seclusion, but are not identified (or recorded) by staff as such – including confining a student with behaviours of concern to an enclosed trampoline that is secured by a staff-controlled zipper.

It is worth noting that a range of matters have pointed to broader, systemic issues, and raise questions about the adequacy of the existing systems for monitoring practice and compliance with policy and guidelines. In this regard, we note that some of the practices had been used repeatedly and over an extended period of time

before concerns were raised. It is important that adequate mechanisms are in place to identify where practice does not meet requirements, and the action that is required in response – such as retraining, undertaking a review of practice and supports for individual students, conducting a review of broader practice and culture, and seeking additional expertise and guidance.

Outside of the school, the existing monitoring of the use of dedicated time-out rooms in public schools involves data being sent to the Director, Public Schools NSW. However, the data is very limited. While a certain amount of information could be gained by the Directors through examining the ‘Time-Out Room Return’ (such as whether the record points to high frequency of use for a small number of students), in and of itself it would not enable effective oversight of practice. For example, it would not enable identification of key factors such as whether the student was locked in the room; how long the student was in the room; or what action was taken before and after the use to ensure that practice is consistent with the guidelines.

The department has advised that analysing school records, ‘such as the school time out register’ enables the Directors to be informed about the behaviour management procedures applied in their networks of schools. ‘If a Director Public Schools NSW’s examination of the time-out register raised questions in regard to the use of a time-out room, they would discuss this with individual principals to offer advice and support, including, where required, the involvement of educational services teams...’⁶⁶ It is useful that Directors may probe further and provide support to schools in response to questions that arise in their analysis of the school’s time-out register. However, the information we have received relating to the use of inappropriate practices over an extended period of time identifies problems with this approach to monitoring, including that it relies on the Director to seek to review the time-out register; it relies on schools appropriately identifying a room as a ‘designated time-out room’; and it relies on the school having kept accurate (or any) records.

Case Study 4.

In 2012, we were notified of allegations that staff at a primary school had locked a student with disability in a time-out room for three hours. In the course of investigating the allegations, EPAC identified systemic issues that appeared to contribute to the alleged conduct, including that:

- risk assessments were not conducted, and there was a lack of regular review of risks posed by students and the time-out room set-up, lack of consistent recording of incidents, and a lack of review of incidents of violence towards staff and students
- the time-out rooms were a central means of discipline in the school, but there was no local policy to guide staff
- staff did not know the school’s policies in relation to discipline, welfare, restraint, escorting, or manual handling
- staff used restraint and ‘physically escorted’ students in a variety of conditions that were not limited to when students posed serious risk of harm to themselves, other students and staff – it was noted that this placed staff and students in positions of unnecessary increased risk of injury; could be seen to unnecessarily escalate student behaviour; and raised concerns about use in relation to students with a history of trauma
- use of the time-out room (ranging from five minutes to over three hours) was contrary to the department’s guidelines – including that the use:
 - had not been risk assessed – the room was bolted on occasions; supervision was not direct or continuous while a student was in the room; mitigation strategies were not identified or recorded to manage risk posed by students with a history of self-harm
 - was not conducive to de-escalating inappropriate behaviour
 - did not appear to be regularly monitored and reviewed as to the value such a technique was adding to the effective management of students’ behaviour
 - did not appear to be notified to parents or the school community, and

66. Department of Education statement of information to NSW Ombudsman, 20 March 2017.

- was as a means of punishment, not as a means of provision of space for the student to de-escalate or obtain emotional/personal control.
- the school had an executive team and teachers that had no significant current experience in managing or teaching primary aged ED/BD⁶⁷ students – this was considered to have contributed to the presence of practices and processes that were inconsistent with departmental guidelines, and inappropriate for the developmental and age levels of the students that the management strategies were applied to, and
- there was a lack of training and knowledge of best approaches in managing challenging behaviours within the teachers' own classes and more broadly as part of a whole-of-school approach.

The review found that, if the key concerns were not addressed, there was a high risk that the school's practices could lead to further allegations of reportable conduct under the categories of ill-treatment and neglect; and such continued conduct poses a risk of significant harm to children in terms of physical and psychological injury as well as a risk of significant harm to staff.

We monitored the actions of the school/department in response to the identified issues. Significant changes were made to the management and operation of the school following the commencement of a new principal, including the introduction of Positive Behaviour for Learning; removal of the use of time-out rooms (while retaining safe and open spaces for students to use voluntarily when needed); development of individual education plans, risk assessments and behaviour plans; and development of, and training in, key policies. Specialist staff in the local Educational Services team also provided support to the school to facilitate improved practice.

Case Study 5.

We were notified of alleged misconduct by a Student Learning Support Officer (SLSO) and a teacher in relation to the restraint of a Year 1 student with autism and intellectual disability. Information relating to the allegations raised broader questions about the operation and management of the school's support classes. As a result, and separate from the investigation into the allegations by EPAC, senior education staff in the district conducted a review of the support classes, and made recommendations to the principal.

Among other things, the review found that:

- The support unit appeared to operate separately from the rest of the school. While students were involved in whole-of-school activities, there was almost no integration between the unit and the school.
- Little or no specialised professional learning had regularly been provided to unit staff outside of compliance training. There were individual statements that were indicative of less current views about disability, the impact of mental health on student behaviour, and a lack of familiarity with contemporary support unit environments, systems, and procedures. The unit staff appeared to be isolated professionally from others both in the school and beyond.
- There seemed to be a lack of clear information around students' individual plans, timetables and adjustments and accommodations, leading to problematic organisation for casual staff, and limited information sharing.
- There did not appear to be clear systems in planning, Personalised Learning Plans (PLP), or signage for management of extreme behaviour.
- The PLP process did not appear to be contemporary or inclusive. The process seemed to exist for compliance reasons only and PLPs were largely cut and pasted and of varying quality. PLPs were largely undated and unsigned. Very few PLPs included behaviour, crisis, risk, or health care management.
- There were no sighted records or plans for managing complex high-need behaviours.
- There was evidence that staff understanding of student behaviour was limited.

67. 'Emotional Disturbance/Behaviour Disorder'

- There was little evidence of deep or quality discussion of academic and curriculum goals, behaviour management, social skills development or PLPs between or among unit staff, or with parents/carers.

The review report included a range of recommendations, including to increase school leadership support to develop and implement improved systems, processes and practices; to have staff visit other settings to compare and contrast models and processes; to develop a policy for best practice completion and review of PLPs; and to use the skills of the Educational Services team in the improvement work.

In relation to non-government schools, our review of the policy, procedure or other guidance in selected schools relating to the use of time-out strategies identified that guidance on this issue is not commonly provided:

- around one-third (38%) provide clear guidance in relation to the use of time-out strategies
- around one-third (38%) indicate that time-out should be supervised at all times
- 22% indicate that time-out is time-limited
- 14% indicate that the use of time-out is to be recorded in some way, and
- very few indicate that seclusion is not to be used (5%), or refer to consent (3%).

In a couple of instances, the guidance provided by the non-government schools linked time-out to in-school suspensions.

Across government and non-government schools, there is a need to ensure that clear guidance is provided to staff and the school community about the use of time-out rooms, and to distinguish between seclusion and the use of safe spaces/voluntary withdrawal. Relevant to this issue, we note that the ACT Expert Panel report provides some useful guidance regarding key criteria that should be satisfied in relation to the use of a safe/sensory space or voluntary withdrawal – including that it is discussed, planned, and approved as part of a behaviour management plan; the student chooses or consents to take the action; the student has freedom of movement to return to the class; the student receives constant monitoring and support; and use of the strategy is reviewed regularly.⁶⁸

There is also a need for greater guidance in relation to the use of restrictive practices, including seclusion and restraint.

Restraint

The department's guidance on physical restraint identifies that its duty of care towards its students means that 'staff have an obligation to take positive action in situations where students' behaviour threatens the safety of other persons', and this may include physical restraint of students. The guidance identifies that physical restraint of students:

- should only be exercised as an absolute last resort
- should only occur where there is a real and immediate risk of injury to persons, including the student, or an immediate risk of serious damage to property – and there is no other practical way of preventing the likely injury or damage
- should only be what is reasonably necessary in the circumstances to prevent the feared injury or serious damage, and
- must not be used if there is a risk of injury to staff.

The guidance indicates that disciplinary action may follow where 'clearly unreasonable use of restraint' has occurred.⁶⁹

68. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour, *op cit*, pp158–159.

69. NSW Department of Education (June 2012) Legal Issues Bulletin No 9, *Physical restraint of students*.

While the department's legal bulletin makes it clear that restraint is only to be used as a last resort and at a point of a real and immediate threat to safety, it does not provide guidance on the appropriateness or otherwise of including physical restraint in a student's behaviour support plan as a planned strategy/response. The department's *Student Discipline in Government Schools Policy* provides high-level guidance about discipline, which is primarily focused on the requirement that schools must develop their own school discipline policy in consultation with school community members. The departmental policy identifies that 'strategies and practices to manage inappropriate student behaviour' must be a component of the school disciplinary policy, but does not refer to, or provide guidance on, the use of restrictive practices.

In relation to maintaining records relating to the use of restraint in public schools, there are no evident requirements, other than via incident reporting mechanisms.⁷⁰ It is not clear what data is captured by schools relating to the use of restraint; the extent to which the data is consistent across schools; and the extent to which the data is examined by Directors or other senior staff outside of the school to identify potential areas for closer examination.

Our review of the policy, procedure or other guidance documents in selected non-government schools in relation to the use of restraint identified that the provision of guidance on this topic is not common:

- one-third (33%) outline the circumstances in which restraint may be used
- one-quarter (26%) provide clear guidance on the use of restraint in the school
- 16% include information on the extent and limitations of the use of restraint (for example, that it is to be for the minimum amount of time)
- 14% refer to restraint needing to be part of a behaviour plan
- 14% identify that information about the use of restraint is to be recorded
- 10% indicate that restraint is only to be used after less restrictive options have been trialled, and
- very few include information relating to obtaining consent (7%), informing parents/carers (5%), or conducting a review after the use of restraint (5%).

The AISNSW told us that, in relation to time-out and restraint, it would only provide advice within the context of the individual planning process, involving students, parents/carers, class teachers, other school personnel, and external professionals working collaboratively to develop approaches to support a student's access and participation in schooling. Where the individual planning process identifies the use of time-out or restraint as an appropriate strategy, AISNSW told us that it would advise that these strategies are only for short-term use with students who are unable to regulate their own behaviour and posing a danger to themselves, and are only to be administered by appropriately trained and qualified staff.

In our consultations, we heard examples of actions taken by principals and school staff to avoid having to use physical restraint on students with violent behaviour, including evacuating other students and staff from classrooms/other spaces wherever possible, rather than seeking to remove or restrain the student concerned.

We appreciate that avoiding the use of restrictive practices, including physical restraint of students, to the greatest extent possible, would be the preference of all parties – physical restraint, in particular, presents substantial risks to school staff as well as the student concerned. However, our work has identified matters in which physical restraint has been used at times when there was not a 'real and immediate threat' to the student or others, but was part of a broader response to the student's behaviours of concern. We have also heard concerns by parents about: a lack of review following the use of physical restraint despite the practice reportedly escalating the student's behaviour and resulting in suspension from school; being told by school staff that physical restraint would need to be a compulsory part of the student's behaviour plan; and being asked to consent to the use of physical restraint in the absence of information about what the practice would involve.

In our consultations, principals expressed a view that guidance relating to restraint and seclusion is in 'bits and pieces', and there would be benefit in having overarching guidance that brings the elements together and provides greater detail about what they can and cannot do.

70. In contrast, some of the information that is required to be captured by disability in relation to the use of restraint in their settings includes details of other less restrictive strategies attempted; reason for the use of the strategy; duration; and consequences/ outcomes.

There are different views about the use of seclusion and restraint in schools, and about the extent to which there ought to be regulation of the use of restrictive practices in schools. The US Department of Education *Restraint and Seclusion Resource Document*, which has informed the development of the recent Victorian guidance, notes that there is 'no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviours that frequently precipitate the use of such techniques'.⁷¹ Consistent with this, some jurisdictions have emphasised the need to focus on the elimination of restrictive practices in schools, and to ensure that restraint and seclusion are not included in students' behaviour plans. For example, a Federal Senate Inquiry in 2015 recommended work between Australian governments to implement a zero tolerance approach to restrictive practices in a schools context, including the principle that restrictive practices must not form part of a behaviour plan.⁷²

In other areas, inclusion of restrictive practices within the context of a behaviour plan has been identified as a safeguard. For example, recommendations from the review of education for students with disability in Queensland state schools in February 2017 include the need for a requirement that the use of a restrictive practice is articulated in a behaviour plan. Recommendations by the ACT Expert Panel in relation to students with complex needs and challenging behaviour included the establishment of procedures that enable the education bodies to approve and monitor any behaviour plans that propose the use of restrictive practices for an individual student.

Specific requirements relating to the use of restrictive practices apply to disability services, including prohibition of the use of seclusion with children and young people. The requirements include that the use of a restricted practice such as physical restraint must be detailed in a behaviour support plan that incorporates positive approaches and educational strategies, and must have informed consent and authorisation by an internal Restricted Practice Authorisation (RPA) mechanism.⁷³

In our consultations, we heard consistent views from the disability sector about the need for a uniform approach to restrictive practices across settings, including schools. In particular, disability sector representatives told us that the existing requirements in relation to disability services – particularly authorisation of the practice by an RPA panel that includes an independent party – provide some level of transparency, and a degree of scrutiny and monitoring. Concerns were raised with us that, in their experience, there is inadequate monitoring and review of the use of restrictive practices in schools, and the use of such practices is rarely informed by expert advice. We were told that there is a need for greater rigour, including external scrutiny.

While principals indicated that they are keen to obtain greater clarity and detail in the guidance and requirements relating to the use of restrictive practices in schools, they also warned against measures that would result in greater paperwork and bureaucracy. In particular, we heard concerns that introducing greater regulation, and requirements that are consistent with the disability services sector, would tie schools up in red tape.

More broadly, there has been a push to achieve a uniform approach to regulating restrictive practices that applies to a broader range of settings than the disability sector, including schools.⁷⁴ The development of the NDIS Quality and Safeguards Framework was considered an opportunity to develop a consistent approach across settings; however, the proposed behaviour support function of the NDIS Quality and Safeguards Commissioner only relates to NDIS providers. We note that some submissions to the NSW Law Reform Commission's current review of the *Guardianship Act 1987* have called for the establishment of a Senior Practitioner in NSW.⁷⁵ The ACT Government is currently holding consultations on the potential establishment of an ACT Office of the Senior Practitioner to reduce and eliminate the use of restrictive practices, including consideration of potential application across service settings, including schools.

71. US Department of Education (May 2012) *Restraint and Seclusion Resource Document*, page iii.

72. Senate Community Affairs References Committee (Nov 2015) *Inquiry into Violence, abuse and neglect against people with disability in institutional and residential settings*, Recommendation 19.

73. FACS: ADHC (Jan 2009) *Behaviour Support: Policy and Practice Manual*. The manual identifies that the RPA mechanism should operate at arm's length from the contributors to the plans or strategies. Its purpose is to ensure that documented support plans or strategies that contain the use of a restricted practice: a) can be clinically justified; b) are authorised within the context of work practice requirements; c) include provision for appropriate consent; and d) can be safely implemented and monitored.

74. For example, in 2014, the Australian Law Reform Commission reported that initiatives at a national level, such as the national framework and the development of a national quality and safeguards system for the NDIS, provided an opportunity to gain a uniform approach across settings. Australian Law Reform Commission (Nov 2014), Report 124: *Equality, Capacity and Disability in Commonwealth Laws*.

75. For example, the submission by National Disability Services.

Apart from emergency situations where it is necessary to prevent immediate harm to the person or others, seclusion and restraint are unlawful if used without legal authority.⁷⁶ The use of restrictive practices can have a significant and traumatic impact on the student who is subject to the practice, as well as staff and other students. The starting point for any discussion about the use of restraint and seclusion should be that all efforts should be made to structure environments and provide supports so that the restrictive practices are unnecessary.⁷⁷

The department's review of its *Student Discipline in Government Schools Policy* provides a valuable opportunity to review and revise the guidance and requirements relating to the use of time-out, and the use of restrictive practices of seclusion and restraint across public schools. In addition to a clear focus on prevention and greater clarity regarding the department's expectations and requirements relating to the use of restrictive practices, there is a need to introduce greater rigour in the actions that are required to be taken in response to critical events involving restrictive practices, including reporting and the strengthening of the monitoring arrangements.

4.2. Part day attendance

Under the Education Act, a child may be exempt from attending school if the Minister or delegate is satisfied that conditions exist that make it necessary or desirable that a Certificate of Exemption should be granted. The Certificate of Exemption may be limited to exemption from the requirement to attend school during the times specified in the Certificate.

The department's *Exemption from school – procedures* indicate that grounds for seeking a part day exemption include that the student is involved in school-based individual student programs that incorporate behaviour management transition plans to re-engage students with education.

Data provided by the department identifies that relatively low numbers of students have exemptions from school attendance, but one-third of students exempted for 100 days or more and almost half of students with a part day exemption had the exemption for reasons associated with behaviour. Of the more than 790,000 students enrolled in public schools in 2016:⁷⁸

- 7,164 students (0.9%) had an exemption from school attendance for up to 100 days. Of these, 10% (748 students) had the exemption for reasons associated with behaviour.
- 197 students (0.02%) had an exemption from school attendance for 100 days or more. Of these, one-third (66 students) had the exemption for reasons associated with behaviour.
- 3,863 students (0.5%) had a part day exemption from school attendance. Of these, almost half (1,814 students) had the exemption due to involvement in behaviour programs.

The department has advised that the above information should be interpreted with caution due to differences in recording systems used by schools in reporting this data. While we note that schools are in the process of changing to a different data system by the end of 2017, the information raises questions about how, and the extent to which, data relating to requests for exemption from school attendance is monitored to identify trends and potential areas for attention.

In our consultations, and in complaints to our office, parents/carers of students with disability and other stakeholders raised concerns that part day attendance is used as a strategy by schools to limit the amount of support they need to provide to the student. We received information about students with behaviours of concern being on a 'loop' of part day attendance, suspensions, and calls to parents/carers to pick their child up early (which is not counted as an absence). One disability-related provider told us that around 30% of the students they work with are on that cycle of suspension, partial attendance, and the parent being called to pick up the child early.

76. JFA Purple Orange (Jan 2017) *An overview of restrictive practices, and the key issues for consideration in relation to the establishment of an Office of the Senior Practitioner*.

77. US Department of Education (May 2012), op cit.

78. Department of Education statement of information to NSW Ombudsman, 20 March 2017.

Consistent with information provided to the ACT review in relation to students with complex needs and challenging behaviours, parents/carers told us that at times they have felt that they had no choice but to agree to the arrangement for part day attendance, which was requested by the school. We also heard that the request from schools for part day attendance (often for two hours per day) tended to align with the period in which 1:1 support was available.

We heard from principals and teachers, particularly those in learning centres, that part day attendance (with the intention to work up to full-time) is an effective strategy for some students, particularly if they have been away from school for an extended period of time. One school provided the example of a student with a background of significant trauma who had not been able to attend school for more than one hour in the beginning, and who is now attending full-time. We were advised that, for some students, part day attendance is the only way they will come to school; while some will only last for an hour, being able to stay for short periods gives them an opportunity to be a success.

The approval arrangements for part day exemptions require public schools to submit a transition plan to restore the child to full-time attendance to the Learning and Engagement Officer for recommendation, who will forward it to the Director, Public Schools NSW, for approval. The inclusion of the check by the Learning and Engagement Officer provides an opportunity for intervention prior to the student commencing part day attendance. In our view, there would be merit in strengthening the safeguards in this process by building in a requirement to check whether expert advice has been sought/is warranted or other intervention is needed before the request for part day exemption is recommended for approval.

4.3. Distance education

The department provides distance education for students living in NSW who are isolated, whose special circumstances prevent them from attending school on a regular basis, or who are unable to access an appropriate curriculum in their local school.⁷⁹

Data supplied by the department identifies that low numbers of students are enrolled in full-time distance education. Of the more than 790,000 students enrolled in public schools in 2016,⁸⁰ 3,001 students (0.4%) were enrolled in full-time distance education (including 44 preschool children). Of these:

- 618 students (21%) were enrolled due to having 'additional learning and support needs'.⁸¹
- 429 students (14%) were enrolled as part of a managed transition strategy associated with 'significant support needs'.⁸²
- 252 students (8%) were enrolled due to 'extraordinary circumstances'.⁸³

Consistent with its feedback in relation to the data on part day exemptions, the department has advised that the above information should be interpreted with caution due to differences in the recording systems used by schools in reporting this data. It is not clear whether, and the extent to which, data relating to applications for distance education is monitored to identify trends and potential areas for attention.

The NSW Government has indicated that over 60% of full-time secondary enrolments in distance education are students with additional health, disability or learning needs.⁸⁴

79. Department of Education, *Distance Education Enrolment Procedures 2017*

80. Department of Education statement of information to NSW Ombudsman, 20 March 2017.

81. Where the student has a disability confirmation, the local school cannot meet the student's educational needs with access to the available school, community and state resources, and distance education school is the most appropriate enrolment. It is expected that students in this category will have exhausted all other departmental provisions before seeking enrolment in distance education.

82. Where a risk assessment indicates that the student cannot attend their local government school on a regular basis. This provision can only be accessed as part of a managed transition strategy between the local government school and the distance education school where the purpose is to return to the local school or to facilitate participation in further education or employment.

83. Where the student's educational and/or welfare needs cannot be met by a regular school with access to school, local and state resources, distance education is the most appropriate option, and a risk assessment/ management plan has been developed that takes into account the specific circumstances of the isolated learning and verifies the safety and suitability of the home or other location in which learning will take place.

84. NSW Government submission to the NSW Parliamentary Committee inquiry into *Students with a disability or special needs in New South Wales schools*, 24 February 2017.

In our consultations, we heard that distance education provides a useful option for some students, as it provides greater flexibility than a standard school environment. We saw examples of where distance education services are being accessed within a setting for students with mental health concerns, to enable the students to continue to access and progress with the curriculum, but with intensive support. Principals also told us that distance education is valuable where the school has exhausted all reasonable options for supporting the student in the school environment, there are safety risks that have not been able to be mitigated, and there are no or limited alternative education options in the area. However, some principals expressed a view that the governance and oversight of students doing distance education needs to be strengthened.

Complaints to our office, and consultations as part of this inquiry, have raised questions about the process by which students are approved for, and transition to, distance education. In particular, concerns have been raised by parents/carers that:

- they received inaccurate information from the school about the type and amount of support available through distance education
- they felt pressured to access distance education to prevent their child being expelled, and
- they did not feel adequately equipped to provide support to their child in distance education to meet their learning needs.

In relation to the last point, some of the parents/carers who raised concerns with us included a single parent of two young children with disability; and a father whose own limited education meant that he found it difficult to provide academic assistance, and whose family did not possess a computer, requiring the student to undertake distance education at the local library.

The application process for enrolment in a distance education school requires parents/carers to confirm that the home learning environment is safe and suitable; to declare that they recognise and accept their roles and responsibilities; and to nominate who will perform the role of supervisor (including interpreting and explaining the instructions or comments in the lesson materials or from the teacher).

In terms of approval of applications for distance education, the procedures require certain information to be provided to confirm that distance education is the most appropriate option. In the case of applications relating to students with additional learning and support needs, the school has to provide documentation to confirm that it cannot meet the student's educational needs 'with access to the available school, community and state resources', including information relating to assessment of additional need, intervention strategies implemented at the school, and an impact assessment of the interventions.

While the distance education school is required to conduct a review of each student with additional learning and support needs at least every 12 months, in our view there would be merit in building additional rigour into the approval process for students in this category to ensure that all reasonable efforts have been made by the school, given the potential significant impact on students of shifting from school to distance education. In this regard, it would be useful to include a requirement that the intervention strategies and assessed impact of their implementation have been informed by expert advice before the application is considered for approval.

4.4. Suspension and expulsion

All schools in NSW are required to have and implement policies related to the discipline of students, including but not limited to the suspension, expulsion, and exclusion of students, which are based on procedural fairness.⁸⁵

The suspension of students from school is a key component of a school's welfare and discipline policies. In particular, where the conduct of a student harms or threatens the safety of others, suspension from school can be an important safeguard.

85. NESA Registered and Accredited Individual Non-government Schools (NSW) Manual; Registration System and Member Non-government Schools (NSW) Manual; and Registration Process for the NSW Government Schooling System Manual.

However, there is no research evidence that the use of suspensions reduces disruptive classroom behaviour, and the research indicates that it can have detrimental consequences, including increased recurrence of the problem behaviour, lower scores in academic achievement, lower school retention rates, increased likelihood of involvement with the youth justice system,⁸⁶ and poor long-term health and wellbeing outcomes. For both Aboriginal and non-Aboriginal students, suspensions are a stronger predictor of low achievement than socio-economic or family factors. Research also shows that suspension may exacerbate challenging behaviour for students with disability or trauma.⁸⁷ Recent Australian research has shown a relationship between external school suspension and a range of behaviours detrimental to the health and wellbeing of young people, including antisocial behaviour and violent behaviour.⁸⁸

Guidance on suspensions and expulsions in public schools

The department's *Suspension and Expulsion of School Students – Procedures 2011* identify that, for most students, suspension from school allows time for the student to reflect on, acknowledge and take responsibility for their behaviour, and to accept responsibility for changing their behaviour to meet the school's expectations. The procedures also identify that suspension allows time for school personnel to plan appropriate support for the student to assist with successful re-entry; and in some cases to put measures in place to ensure the safety of students and staff.

The procedures outline conduct by students that will result in immediate suspension (including physical violence); short suspension of up to and including four school days (continued disobedience⁸⁹ or aggressive behaviour⁹⁰); or long suspension of up to and including 20 school days (including physical violence,⁹¹ and persistent or serious misbehaviour⁹²).

There is a range of actions that the school must take prior to the principal imposing a suspension,⁹³ including ensuring that appropriate personalised learning and support strategies and discipline options have been applied; appropriate support personnel available within the school and externally have been involved; and specific personalised learning and support to help the student to manage inappropriate behaviour is developed. The principal must ensure that the implementation of the procedures takes into account factors such as the age, individual needs, any disability and developmental level of students.

Guidance on suspensions and expulsions in non-government schools

Our review of the policy, procedure or other guidance in selected non-government schools in relation to student discipline and suspensions and expulsions identified that schools are more likely to provide guidance on areas that are linked to the registration requirements:

- most, but not all, of the schools (84%) have policies relating to the discipline of students, including suspension, expulsion and exclusion

86. Among other research, the NSW Bureau of Crime Statistics and Research (BOCSAR) found that not being in school, having being suspended or expelled from school, and having had several prior contacts with the criminal justice system all independently increased the likelihood of another conviction. The 2009 NSW Young People in Custody Health Survey found that 'the majority of young people in the 2009...sample had been suspended from school at least once (88%). Two-thirds (66%) reported being suspended three or more times.' The report also noted that 'these results were not found to be significantly different by gender or Aboriginality among young people in custody'. (p35)

87. ACT Expert Panel on Students with Complex Needs and Challenging Behaviour (2015), op cit, p167.

88. Australian Institute of Criminology (2017) 'Positive associations between school suspension and student problem behaviour: Recent Australian findings', in *Trends & issues in crime and criminal justice*, No. 531, June 2017. The study found that school suspension was associated with a 1.5 times greater risk of antisocial behaviour; and school suspension and arrest increased the odds of violent behaviour at least 1.5 times.

89. Continued disobedience includes, but is not limited to, breaches of the school discipline code such as: refusal to obey staff instructions; defiance; disrupting other students; use of alcohol or repeated use of tobacco.

90. Aggressive behaviour includes, but is not limited to, hostile behaviour directed towards students, members of staff or other persons, including damaging the property of the school or students; bullying; verbal abuse and abuse transmitted electronically.

91. Which results in injury, or which seriously interferes with the safety or wellbeing of other students and staff (including sexual or indecent assault).

92. Persistent or serious misbehaviour includes, but is not limited to: repeated refusal to follow the school discipline code; threatening to use a weapon in a way that might seriously interfere with the safety and wellbeing of another person; making credible threats against students or staff; and behaviour that deliberately and persistently interferes with the rights of other students to learn or teachers to teach including bullying, harassment and victimisation.

93. Apart from cases for immediate suspension or other serious instances of misbehaviour affecting the safety and welfare of others.

- three-quarters (76%) indicate that the suspension, expulsion and exclusion of students is based on procedural fairness
- just over half (57%) provide clear guidance on the purpose of suspensions
 - 38% of the policies indicate that the purpose is to provide a consequence for the student's actions
 - 22% identify that it is to enable a review of the situation and provide an opportunity to put strategies and supports in place, and
 - 17% indicate that the purpose is to protect others from harm.
- less than half (45%) provide clear guidance on the process relating to suspensions
- less than one-third (29%) indicate that the process takes into account the individual needs of the student (very few directly discussed disability as a factor to be considered)
- 29% provide guidance on in-school suspensions
- less than half (40%) identify the process for suspension resolution (such as a suspension resolution meeting), and
- less than half (45%) outline the record-keeping requirements.

Data and practice in relation to suspensions and expulsions

Research has identified over-representation of certain students in suspensions. In particular, higher rates of suspensions have been found in relation to educationally challenged students or those with cognitive/learning impairments, especially where there are behavioural issues associated with the impairment; and students with a child protection/out-of-home care history. Aboriginal students have also been identified as being over-represented in suspensions.

At the time of writing the report, the most recently published data on suspensions related to 2015. The following tables provide data on suspensions in public schools for a three-year period, 2013–2015. There is no central collection or reporting of suspension data across non-government schools.

Table 2: Short suspensions of students in NSW public schools, 2013–2015

Short suspensions (Up to 4 days)	2013	2014	2015
Total suspensions	48,848	48,522	47,622
Continued disobedience	23,152 (47%)	26,701 (55%)	20,859 (44%)
Aggressive behaviour	25,696 (53%)	21,821 (45%)	26,763 (56%)
Total students	29,976	29,665⁹⁴	29,651
Aboriginal students	6,494 (22%)	6,741 (23%)	7,005 (24%)
Average length	3 days	3 days	3 days
Grades K–6	6,686	6,860	7,280
Grades 7–10	20,093	19,582	19,384
Grades 11–12	3,197	3,229	2,987

Source: Department of Education, *Suspensions and Expulsions 2013, 2014, and 2015*⁹⁵

94. The data released by the department in relation to suspensions in public schools in 2014 states that 29,665 students received a short suspension. However, the total number that is reached by adding the separate grades together equates to 29,671 students.

95. <http://www.dec.nsw.gov.au/about-us/plans-reports-and-statistics/key-statistics-and-reports>

Table 3: Long suspensions of students in NSW public schools, 2013–2015

Long suspensions (Up to 20 days)	2013	2014	2015
Total suspensions	17,531	17,498	17,640
Physical violence	6,799 (39%)	6,641 (38%)	6,862 (39%)
Persistent misbehaviour	8,300 (47%)	8,171 (47%)	7,984 (45%)
Serious criminal behaviour related to the school	984 (5.6%)	1,006 (5.7%)	1,141 (6%)
Total students	12,281	12,188⁹⁶	12,388
Aboriginal students	3,054 (25%)	3,168 (26%)	3,399 (27%)
Average length	11.5 days	11.5 days	11.5 days
Grades K-6	2,496	2,572	2,650
Grades 7-10	8,492	8,336	8,453
Grades 11-12	1,293	1,283	1,288

Source: Department of Education, *Suspensions and Expulsions 2013, 2014, and 2015*⁹⁷

Table 4: Expulsions of students in NSW public schools, 2013–2015

	2013	2014	2015
Total expulsions	347	262	325

Source: Department of Education, *Suspensions and Expulsions 2013, 2014, and 2015*⁹⁸

The data relating to suspensions in public schools identifies that:

- While the total number of short suspensions reduced by 2.5% between 2013 and 2015, there has not been a notable change in the total number of long suspensions, or in the number of students receiving short and/or long suspensions.
- The most common reason for short suspensions in 2015 was aggressive behaviour, accounting for over half of all short suspensions.
- The most common reason for imposing a long suspension was persistent misbehaviour, accounting for almost half of all long suspensions. Between 2013 and 2015, more long suspensions have been imposed for persistent misbehaviour than for physical violence.
- The average length of suspensions has remained constant, with students typically returning to school earlier than the maximum allowable time. On average, students were on short suspension for 3 (out of a maximum 4) days, and were on long suspension for 11.5 (out of a maximum 20) days.
- While most short and long suspensions involve students in Years 7–10, consistently accounting for two-thirds of all suspensions, young children (K–6) account for 20% of all suspensions.

The data also shows that Aboriginal students are significantly overrepresented in suspensions from school. In 2015, while Aboriginal students comprised 7% of FTE enrolments in NSW public schools, they comprised 24% of short suspensions, and 27% of long suspensions. There was a small increase in the proportion of Aboriginal students receiving short and/or long suspensions between 2013 and 2015.

96. The data released by the department in relation to suspensions in public schools in 2014 states that 12,188 students received a long suspension. However, the total number that is reached by adding the separate grades together equates to 12,191 students.

97. <http://www.dec.nsw.gov.au/about-us/plans-reports-and-statistics/key-statistics-and-reports>

98. <http://www.dec.nsw.gov.au/about-us/plans-reports-and-statistics/key-statistics-and-reports>

Regional and remote areas had the highest proportion of students receiving short and long suspensions by percentage of area enrolment in 2013–2015. In particular, the highest proportion of students receiving suspensions have been in Western NSW, Far West NSW, Northern NSW, Hunter New England and Mid North Coast areas.

Hunter New England, Mid North Coast, and Western NSW were also areas that featured highly in expulsion data in 2015, accounting for 18%, 11% and 7% of all expulsions respectively.

In our consultations, we received concerns about Aboriginal students (mainly secondary school) on the Mid North Coast, including Kempsey, Taree, Forster, and Port Macquarie receiving back-to-back suspensions. Stakeholders told us that it is not evident that parents understand the process and requirements when students are suspended, and there are questions as to whether schools are following their own processes and policies. In a later chapter in this report, we discuss issues pertaining to Aboriginal students more broadly.

In our consultations, we heard that in-school suspensions are not permitted in public schools. Where available, principals may refer students who have received a long suspension to a suspension centre (also known as 'return to school' programs). In the main, students attend the centre for part of the day and then return home – transportation to and from the centre is the responsibility of the student/their parent or carer. The focus in the centres is on providing intensive support to the student to maintain their schoolwork while suspended; working with them on some of the factors that led to the suspension, such as emotional regulation and social skills; and working with the home school to support the student's successful return to school. The department operates 22 suspension centres/return to school centres in NSW, staffed by a head teacher and an SLSO.⁹⁹

Some non-government schools told us that they sometimes provide in-school suspensions, depending on relevant factors, such as the student's home life. Examples were provided of students undertaking in-school suspension in a spare room in the school office, where they are supervised by staff including the principal, and have separate break times to the rest of the students, to minimise association during suspension.

In our consultations, concerns were raised with us about students being suspended despite child protection risks at home, and some non-government school representatives identified the challenges involved in assessing the level of risk at school versus the level of risk at home (for example, associated with domestic and family violence).

More broadly, we heard from a range of parties, including residential OOHHC providers, that suspensions are not consistently used as an opportunity to review the situation and to look at the changes that may be needed to prevent recurrence. We heard from a range of principals that suspensions are sometimes used to give staff (and other students) a break from the particular student's behaviour. In one case, a principal advised that a student had recently been suspended for swearing, to provide staff with a break.

Our previous work in relation to suspensions in public schools

In 2007–2008, in response to a range of complaints, we conducted an investigation into the implementation of the department's suspension and expulsion policy and procedures. We found problems with compliance with the requirements, including that:

- less than half (43%) of files contained information about welfare strategies and other disciplinary measures prior to suspension
- only one-quarter of the files documented a formal disciplinary interview prior to suspension
- less than half of files recorded a suspension resolution meeting (47%), or contained the required report by the school counsellor (44%), and
- many of the students had not received counselling or other intervention to help them to reflect on their behaviour or learn strategies to better manage their own behaviour.

99. Department of Education and Training, *Annual Report 2007*; Supported Return to School Program Campbelltown, <http://www.csc.schools.nsw.edu.au>.

More broadly, we found that the nature of the information being collected, and the lack of analysis of long suspension data, meant that the department had limited knowledge about the needs of students who were being suspended. In particular, we identified that, while the suspension procedures require principals to take into account any disability and developmental level of students, it was unclear how the department could be assured that behaviour issues related to disability were not incorrectly being dealt with through the disciplinary process in the absence of adequate support being available.¹⁰⁰

To date, it is not evident that the problems we identified in relation to the information collected and analysed regarding suspensions and students with disability or additional needs have been addressed. The data that is publicly reported in relation to suspensions does not identify the proportion that involves students with disability or additional support needs. The department has advised that the new Learning Management Business Reform Student Wellbeing (Synergy) tool includes information relating to suspensions/expulsions,¹⁰¹ and reports can be run on the Suspension and Expulsion Register. However, the advice does not clarify whether, and to what extent, the department will be able to analyse suspension information to ascertain the proportion that relate to behaviour associated with disability, and any related practice issues.

In May 2016, the Audit Office of NSW reported that:

Educational services staff advised that they monitor suspensions and expulsions that occur in schools. If they notice a higher than usual number of suspensions, they assess whether the behaviour triggering the suspension is attributable to disability, and then determine whether teachers in that school need more support. A more comprehensive review of suspensions would help the Department identify whether students with disability are unreasonably over-represented in suspension data, or whether this is happening in specific schools.¹⁰²

The Audit Office recommended that the department should review how schools support the behavioural needs of students with disability to: ensure the appropriate use of school discipline and suspension policies; and address any issues in how schools support children when behavioural problems arise. The department has accepted the recommendations and indicated that it will consider ways in which PBL can be used to strengthen school responses to support the behavioural needs of students with disability.

Our work also identifies the need to strengthen the collection, analysis, and reporting on suspension and expulsion data in relation to other students with complex needs and challenging behaviour. Children and young people in residential OOHc are known to have complex needs associated with trauma and are some of the most vulnerable members of our community. In Chapter 5, we discuss this group of young people more broadly.

Complaints to our office and consultations with stakeholders identify that the suspension of students with disability for behaviour that is associated with their disability continues to be a significant issue. Many parents and other stakeholders expressed frustration about the level of understanding of school staff about students with disability and the function of behaviour, and the adequacy of the actions taken to prevent the behaviour from occurring. In particular, we heard concerns that students with disability are suspended for behaviour that they may not be able to control, with limited or no ability to understand the reason for the suspension or to reflect on their behaviour.

We were also told that there is a need to increase the focus on prevention, rather than response. In this regard, some stakeholders told us that students are suspended for known behaviours, without the development of a behaviour plan. Complaints to our office have also raised questions about the adherence of some schools to policy requirements relating to suspension, including matters where it is not evident whether, and how, the school has taken the individual needs of the student into account in making the decision to impose a suspension(s); and there is no indication of action by the school during the student's suspension to consider or plan appropriate support to assist with re-entry and to reduce the chances of recurrence.

100. In 2010, the department advised that no additional information could be extracted using the current data collection process, but that a new Student Administration and Learning Management system would facilitate the collection of an increased range of data when introduced in the next few years. In response, we indicated that we remained concerned that the department had no systematic way of knowing if behavioural issues related to disability were being dealt with through the disciplinary process because adequate support is not available.

101. The information on suspensions and expulsions that is stored in Synergy includes date and incident details; suspension type, length, start/end dates; suspension resolution and review dates; record of approval; and relevant documents associated with the suspension/expulsion.

102. Audit Office of NSW (May 2016) *Supporting students with disability in NSW public schools*, p22.

The department's procedures provide for students and parents to appeal if they consider that correct procedures have not been followed, and/or that an unfair decision has been reached. The department has advised that in the last three years (2014–2016), 348 appeals were made in relation to suspensions and/or expulsions. Almost 20% (61) of the suspension decisions were upheld on appeal.

Key points in the suspension process – including consideration as to whether to suspend a student, and the suspension resolution meeting – do not appear to adequately trigger actions to examine the underlying cause of the student's behaviour; to review what has been done to date; and to identify and implement further actions. While the suspension procedures require the involvement of appropriate internal and external support personnel prior to imposing a suspension (except in limited circumstances), this does not consistently appear to be the case.

The department advised that Directors, Public Schools NSW, monitor compliance with the suspension procedures in their principal networks through:

- reviewing student suspension data trends in schools
- evaluating suspension and expulsion appeals and providing follow-up guidance and support to principals to improve practices
- analysing system-generated notifications of suspensions and expulsions, and
- if an anomaly occurs, contacting the principal to clarify the implementation of policy and procedures, and monitoring future compliance.

Given the significant consequences for students of suspensions, there is a need for greater rigour in the process, and in the monitoring of practice.

4.5. Alternative settings

Students with complex needs and challenging behaviour are in all education settings – mainstream, support classes, and SSPs. Some of the SSPs specialise in students with disability; students with specific diagnosed conditions (such as autism); students with significantly challenging behaviour; and students with mental health concerns ('emotional disturbance'). Some of the alternative education settings include learning centres¹⁰³ and tutorial centres.¹⁰⁴ There are also schools that operate in hospitals and juvenile justice facilities.

We heard a range of views about the merits or otherwise of having specialist settings for students with complex needs and challenging behaviours. In relation to students with disability, research identifies that those who learn in inclusive classrooms in mainstream settings make better progress than those who learn in separate classrooms or schools,¹⁰⁵ and provides evidence of 'positive outcomes of inclusive education for social, academic, cognitive and physical development in children who do and do not experience disability'.¹⁰⁶ Based on the research, inclusion of students with disability, and students with complex needs and challenging behaviour, should be the default position, and all reasonable efforts should be made to ensure that the needs of students with additional needs are met in mainstream education settings.

However, there are some students with complex needs and challenging behaviour who appear to require a different approach than what is typically provided in mainstream classrooms. In particular, we noted the benefit of smaller class sizes and personalised support for some students, such as those with a background of substantial trauma, and/or with complex mental health concerns.

103. The department operates 35 learning centres (previously called behaviour schools) statewide. Learning centres provide a range of specialist programs for students with challenging behaviour in Years 5–10, with the aim of returning the students to regular schools or supporting their transition to other education or employment opportunities. Of the 35 learning centres, 14 were established to provide support to students with a confirmed mental health disability (Emotional Disturbance), with three of these operating in a NSW Health setting. The remaining 21 learning centres cater for students with severely disruptive behaviour. Each learning centre has between three and 11 classes with a maximum class size of seven students. There are over 500 learning centre places available in NSW.

104. The department operates 40 tutorial centres statewide. The centres cater for students in Years 5–10 who require intensive behavioural and educational support. Tutorial centres are attached to a managing school, generally a secondary school. Each tutorial centre has up to three support classes with a maximum class size of seven students at any one time. There are over 400 tutorial centre places available in NSW.

105. Graham, L.J., and de Bruin, K, 'Pauline Hanson is wrong – we need to include children with disability in regular classrooms', *The Conversation*, 22 June 2017.

106. Children with Disability Australia (2014) *Inclusion in education towards equality for students with disability*, p23.

It is evident that specialist settings like learning centres are valued by mainstream schools; they appear to provide a more flexible education option for the student while reducing the risks to others in the mainstream school. We heard concerns from many principals that demand for these schools exceeds supply, and heard arguments that there is a need for more places, particularly in regional areas.

Learning centres are not intended to be an ongoing placement for students; their aim is to return the students to their regular school or support their transition to other education or employment opportunities. In our consultations, we heard about the persistent work that is undertaken by some learning centres to maintain a connection with the student's home school; to ensure that the home school appreciates that the student is still part of their school community; and to work towards the student reaching a point at which transition back to the home school is feasible. We heard that the level of complexity of the students coming into schools, and into the learning centres, has increased, which has an impact on the flow-through of students in the learning centres. We also heard mixed views about the '4-1' model – where the student attends the learning centre or alternative education setting for four days, and attends the home school for one day. While some parties had strong views that the model doesn't work, others indicated that it had been useful for some students.

We saw evidence of learning centres and other specialist settings providing a more flexible approach for students, and greater accommodation of behaviour-related incidents, including a higher threshold for suspension; less concern about more minor issues such as student compliance with uniform requirements; and changes to the physical environment of the school (such as replacing glass with Perspex, and reinforcing door frames) to minimise the impact of behavioural incidents on the school and the students. We noted an intensive focus on social and emotional learning, including emotional regulation, sometimes through using project-based learning; and saw a strong emphasis on seeking to engage the students in school and learning. Overall, it was evident that learning centre staff are highly conscious that their school is likely to be the end of the line for their students in terms of education options. In some cases, the students are coming to them after multiple other school placements have failed.

We heard from principals that sometimes they have invested significant time and resources and 'tried absolutely everything' to maintain the student in the mainstream school, but it hasn't worked; and that the learning centres and other specialist schools provide an alternative option for the student and the school. From our work, it is not always evident that all reasonable measures (including gaining expert advice) have been taken by a school before adverse action is taken and/or the need for an alternative education option is discussed. However, we are also aware of the significant complexity of some of the students with particularly challenging behaviour, including the following examples provided during our visits to schools:

- A student has been in two separate juvenile justice facilities, has chronic mental health concerns, and has self-harming behaviours. They attend a learning centre every day, but it is flexible – sometimes they will come for 20 minutes in the morning and attend again in the afternoon. The school is working with the student on self-management and helping them to remain out of the criminal justice system.
- A student in residential OOHC has a background of significant trauma over an extended period, and their violence towards others has escalated. The student refuses medication, occupational therapy, and counselling; school is the only thing they will engage in. The learning centre has negotiated with another SSP for the student to attend a separate classroom with one other student with violent behaviour. The student attends for 60–75 minutes a day, with 3:1 support (classroom teacher, support teacher, and a member of the school executive). The school reports that in the six months the student has been attending school with this arrangement, they have increased their social interactions and increased the time spent focusing on learning, with no violence so far. The school holds case review meetings every three weeks in relation to the student, which are attended by at least six external agencies.

We note that the above matter involves the use of significant resources to engage a young person with very complex needs in education, under fairly isolating conditions. It highlights the dedication of some schools to assisting vulnerable young people to gain an education and to try to stop a concerning trajectory, and the importance of multi-agency collaboration in relation to these young people. However, this matter also highlights some of the challenges faced by residential OOHC providers in seeking to obtain and retain an appropriate education setting for the children and young people in their care.

In response to a recommendation in the 2010 NSW Parliamentary Inquiry into the provision of education to students with disability or special needs, the department commissioned an independent literature review of national and international models of effective practice in providing educational services to children and young people with high-level disruptive behaviour. The information obtained through our inquiry is largely consistent with the key themes identified in the review, including that no single model appears to be effective in all circumstances and for all students; it is appropriate that there be a diverse range of education options for students within an inclusive education system; and alternative schools should be networked with mainstream schools and integrated with family, community and health services.¹⁰⁷ The review suggested that an independent evaluation of the current situation in NSW be conducted.

As there is no single option that works for all students, it is imperative that there are a wide range of educational options to accommodate the needs of as many students as possible. While NSW has a range of settings, the information from our consultations and the data relating to the school attendance of students in residential OOH, highlighted in the next chapter, indicates that a broader range of options are needed – particularly for those with significant trauma, behaviour, and/or disengagement to the extent that they're effectively not receiving an education.

107. The other themes identified in the literature review included that: transitions between mainstream and alternative education environments (in both directions) need to be carefully managed, with long-term follow-up; education models that focus on academic outcomes combined with behavioural and therapeutic support are preferable to any one approach on its own; and clarity is required about the alignment of the purposes and priorities of the educational model and intended outcomes for students, education policy directions and broader social functions.

Chapter 5. School support for students in residential OOHC

In order to obtain a better understanding of the extent of the challenges facing the education system in supporting students who have significant support needs, we obtained school attendance and related data in connection with children and young people in statutory OOHC who are living in residential care.

5.1. Addressing trauma for children in OOHC

The NSW Government's current plan to reform residential OOHC acknowledges that children and young people in these placements have 'identified high and complex needs that have not been met in a family-based or foster care placement. Complex emotional and behavioural issues are characteristics of the residential care population with resultant behaviours often presenting a risk to the young person and others in their immediate environment'.¹⁰⁸

The Government is redesigning the residential care system in order to provide intensive therapeutic care. 'Therapeutic care for a child or young person in statutory OOHC is a holistic, individualised, team-based approach to the complex impacts of trauma, abuse, neglect, separation from families and significant others, and other forms of severe adversity'.¹⁰⁹ The purpose of commissioning a therapeutic care system includes 'developing a service system focused on recovery from trauma [and] providing a broader range of options for children and young people to achieve outcomes, in particular around their health and education'.¹¹⁰

The Government has released a framework to guide service provision in the new system. Among other things, the framework notes that education is one of the aspects of a child or young person's life to be addressed by therapeutic care. It also states that congruent actions must be taken across agencies and government bodies – including education – to provide children and young people with integrated responses to their needs.

Research cited by the Australian Council for Educational Research suggests that, 'In the classroom, children's trauma symptoms may be understood as attentional deficits, learning disabilities or behavioural or conduct problems (Downey 2007). Researchers like Tiecher and colleagues (2003) argue that trauma informed behaviours are important coping mechanisms that a child may develop to survive extremely stressful experiences, and that focusing on eliminating these behaviours may be damaging to the child. Therefore, it is important for educators working with traumatised children to understand the key developmental pathways that may be affected by childhood trauma, and how to support resilience through these pathways (Perkins, and Graham-Bermann, 2012)'.¹¹¹

5.2. OOHC in Government Schools Policy

The department's obligations towards its students who are in OOHC are spelled out in its *OOHC in Government Schools Policy*, which was implemented in July 2010. The objective of the policy is to 'enhance the participation, retention, educational outcomes and wellbeing of children and young people in statutory OOHC who are attending government schools'.

In particular, and as noted in Chapter 2, the policy requires schools to collaborate with caseworkers and other stakeholders in developing an individual education plan for every student in statutory OOHC. The education plan should identify the child's academic and other needs, including behavioural needs. It may also include other plans, such as a behaviour plan. The education plan is required to be reviewed at least annually, and when a child's circumstances change.

108. Family and Community Services, Expression of Interest Program Description Intensive Therapeutic Care, p5.

109. NSW Therapeutic Care Framework (March 2017), p2.

110. Family and Community Services, Expression of Interest Program Description Intensive Therapeutic Care, p4.

111. Tobin, Mollie (2016) *Childhood trauma: Developmental pathways and implications for the classroom*, http://research.acer.edu.au/learning_processes/20.

The policy assigns various responsibilities to school principals, OOHC Coordinators, and Educational Services Directors. The Executive Director, Learning and Wellbeing, is required to monitor the implementation of the policy statewide.¹¹²

In March 2011, the Department of Education and the Department of Family and Community Services (FACS) signed a memorandum of understanding on the provision of educational services for children in OOHC. In 2014, the two agencies established an agreement to exchange information, including NAPLAN results, about children in OOHC who are in public education. The following year, FACS entered into a similar information exchange arrangement with the Catholic Education Commission.

5.3. What our analysis shows

As of 30 June 2016, there were 681 children and young people in residential OOHC. In seeking to examine the extent to which the department is meeting the challenges facing children and young people in residential care who require an education, we surveyed eight OOHC providers. Between them, the eight providers supported 54% (369) of the residential OOHC population in NSW.

We asked the agencies for information about the patterns and reasons for school non-attendance for all children who had been in their care for three months or more and who had missed more than 20 school days in 2016 for reasons other than ill-health. For each child who met these criteria, we sought a range of information including:

- whether the child identifies as an Aboriginal and/or Torres Strait Islander (ATSI)
- the school sector(s) (government; Catholic Systemic; other Independent schools) in which the child is, or has been, enrolled while in the agency's care
- whether, for funding purposes, the school has identified the child as having a disability and/or additional support needs
- if the child has been identified as having a disability, the nature of the disability
- the total number of school days absent from school
- the reason(s) for their non-attendance against the following criteria:
 - instances of suspension from school and the total number of days suspended (per instance)
 - number of days absent due to a delayed enrolment, and
 - number of days absent due to refusal to attend.

The agencies provided information for 295 school age children and young people who had been in their care for three or more months in 2016. **Of these, 128 (43%) missed 20 or more school days in 2016 for reasons other than illness.**¹¹³

These 128 children missed an average of 88 school days in 2016, equating to 44% of the school year. Our analysis showed that the 128 children had multiple challenges:

- more than half of the children (70) have a disability, and 15% of these children have multiple disabilities
- nearly three-quarters of the children (91) have additional support needs at school
- half of the children (67) attend SSPs or support classes
- almost 60% of the children (76) were suspended in 2016, and these children lost, on average, 29 school days to suspensions
- 13% of the children (16) were expelled from school in 2016, and these children lost, on average, 44 school days to expulsions, and
- almost one-third of the children (37) had their school enrolment delayed in 2016, and these children lost, on average, 42 school days to delayed enrolment.

112. The department employed 10 OOHC Coordinators as part of the *Keep Them Safe* child protection reform implemented from 2010. These positions have since been abolished.

113. The majority of the 128 children (89% or 114) were in public schools, and about one-third (42) were Aboriginal.

Of the 295 school age children from our sample, we identified 229 who were enrolled in public schools in 2016. We asked the department to cross check whether its data systems identified these children as being in OOHC. **The department identified that only 26 (11%) of the 229 children and young people were recorded in its data systems as being in OOHC.**¹¹⁴

5.4. Observations made by residential OOHC providers

We also sought the views of residential care providers about their experiences in engaging with government and non-government schools on behalf of children in their care.

Although the providers pointed to examples of positive engagements with schools and excellent responses by those schools to the behaviour needs of individual children, they suggested that overall there were significant challenges in working with this cohort across the public education system. We have summarised below a number of the key issues they raised:

- lack of expertise and adequate resources within schools to accurately assess and address the needs of children who have experienced trauma
- inadequate communication channels between schools and providers to ensure early and timely resolution of problems arising from children's behaviour
- absence of complaint processes and escalation pathways
- lack of flexible approaches to behaviour support that cater for individual children
- excessive delays in school enrolment processes and in accessing behaviour supports
- excessive use of suspensions in both mainstream schools and SSPs
- lack of effective monitoring and oversight of practices relating to suspensions
- learning centres and tutorial centres tend to be the only options offered for children with behaviours of concern in residential OOHC, and there are long waiting lists for access to these schools, and
- lack of transparency relating to the use of funding for support for students with disability.

Several providers argued that there is a need for more options in relation to learning centres and other specialist settings because some traumatised children will need substantial support to improve the prospect of them becoming school ready.

The providers also acknowledged some of the challenges they face in their own organisation, including that some of their caseworkers have a limited understanding or knowledge of school policies and procedures, which affects their ability to advocate effectively for children in their care.

5.5. Relevant actions by FACS

Given the concerning information relating to the data capture and the school attendance of students in residential OOHC identified through this inquiry, we provided the draft chapter to FACS for its consideration and response.

FACS advised that the findings for children and young people in residential OOHC in this chapter highlight concerns that FACS is addressing with the department. FACS advised that:

Similar outcomes were observed in a recent review conducted by the *Their Futures Matter* implementation Unit for 68 children under 12 years in residential care. FACS is currently in discussions with each child's local school to identify the current plans and supports with a view to progress strategic planning and interagency involvement to support education for the cohort.

114. FACS has advised that it is finalising a data exchange with the department to identify those children and young people in statutory OOHC and their involvement on the 'Education Pathway'.

FACS has recently developed the *Invest in My Success* strategy to enhance educational outcomes for children in care. The strategy is multifaceted and includes strengthening the OOHC Education Pathway, developing resources to raise expectations about education outcomes, encouraging better collaboration and access to support services and tracking educational measures to highlight improved outcomes.

FACS' expectation is that all school aged children in statutory OOHC are enrolled in school and that they receive the necessary support to learn and develop to reach their potential. This progress is to be tracked under the Education Pathway where students in OOHC are expected to receive a coordinated response to improve their educational performance through planning, support and review processes.

FACS and the Department of Education are finalising a data exchange to identify those children and young people in statutory OOHC and their involvement on the Education Pathway. The data exchange will be coordinated centrally and disseminated to appropriate agency staff with a planning and case management role to ensure students in OOHC are being appropriately engaged and supported at school. Data sharing agreements will also be put in place with the Catholic Education Office and the Association of Independent Schools.

In addition, FACS is planning to develop a suite of caseworker and carer resources in consultation with the Department of Education as part of the Education Pathway to better inform the sector about the educational needs of children and young people in OOHC. FACS will incorporate advice for residential care providers on enrolment, planning and monitoring to better inform and support the sector in discussions with the Department of Education.¹¹⁵

FACS also noted the significant reforms that are underway for residential care in NSW, with the introduction of the Intensive Therapeutic Care (ITC) model. 'The model will more effectively and holistically address the needs of children and young people and improve their outcomes through the provision of consistent therapeutic care and individualised packages of support. Integral to this approach is the role of government and NGOs to deliver services and supports that include those related to health and education. Collaboration and coordination is critical to support children and young people accessing services through the introduction of NGO Therapeutic Specialists, FACS Therapeutic Coordinators and multidisciplinary care team meetings'.¹¹⁶

5.6. Our observations

There are statutory and policy goals that aim to alleviate disadvantage and improve outcomes for children in NSW public schools. However, for a substantial number of the children in residential OOHC that we reviewed, the evidence is clear that the public education system is struggling to meet the educational needs of these children. It also illustrates the current challenge for the education system in meeting the needs of students with complex needs and challenging behaviour more generally.

The department's lack of documented information about the OOHC status of the children we reviewed highlights the need for improved work between the department and FACS to ensure that children in OOHC are accurately identified at an early point to enable an appropriate and informed response to meeting their learning and support needs.

We welcome the advice of the department and FACS regarding the actions that are underway to facilitate data exchange to ensure that students in OOHC are appropriately identified, and to track the progress and educational outcomes for this vulnerable cohort. However, we note that there was significant recognition in the Special Commission of Inquiry into Child Protection in NSW in 2008¹¹⁷ of the need to improve school attendance and educational outcomes of children and young people in OOHC, including the need to develop 'a mechanism for monitoring, evaluating and reviewing access and achievement of outcomes'.¹¹⁸ It is disappointing to note the lack of progress in addressing these issues. While we note the key actions that are being taken by FACS and the department, it is ultimately the outcomes for the children and young people that will be the critical test of the reform process.

115. Department of Family and Community Services response to NSW Ombudsman draft report, 1 August 2017.

116. Ibid.

117. We note that, among other things, the Inquiry report identified that '*Many submissions to the Inquiry raised concerns about children and young persons not getting access to education because their challenging behaviours resulted in expulsion and suspension from school*'. The Hon James Wood AO QC (Nov 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 2, section 16.388, p670.

118. The Hon James Wood AO QC (Nov 2008) *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 2, recommendation 16.3, p688.

Chapter 6. Engaging Aboriginal students with behaviour support needs

As part of this inquiry, we considered it important to examine some of the significant issues involved in meeting the needs of Aboriginal students who have a disability and/or additional support needs. In doing so, we have drawn from our many years reviewing the delivery of government services to Aboriginal communities.

For a range of reasons associated with structural disadvantage, many Aboriginal children and young people – especially in high-need locations – will require behaviour intervention and support. The timeliness and quality of the intervention and support they receive will often influence whether and how effectively they engage with school and their safety and wellbeing more generally.

Available data shows that, while many Aboriginal students in NSW are performing well at school (for example, in 2014, over 80% of Aboriginal students statewide performed at or above minimum national standards in NAPLAN reading and numeracy),¹¹⁹ as a cohort they are still less likely than non-Aboriginal children to regularly attend school (particularly in the secondary years) and significantly more likely to be suspended.

In 2015, the average rate of primary school attendance for Aboriginal students in NSW was 89.3 compared to 93.3 for non-Aboriginal students. The gap was greater for secondary school attendance, with the average rate for Aboriginal students being 78.8 compared to 89.7 for non-Aboriginal students.¹²⁰ There has been a steady decline in Aboriginal senior secondary attendance from 2008, when the rate was 82.9%¹²¹ – still well below COAG's benchmark of 90% attendance for Aboriginal students.

Furthermore, as we highlighted in our 2012 report¹²² about responding to child sexual abuse in Aboriginal communities, the average statewide attendance rate for Aboriginal students is significantly higher than the attendance rate for Aboriginal students within certain regions, and can therefore conceal the true extent of non-attendance at school by Aboriginal children in some locations.¹²³ While Aboriginal students accounted for just 7% (54,150) of total enrolments in government schools in 2015, they comprised 27% (3,399) of the 12,388 students given a long suspension (up to 20 school days) and 24% (7,005) of the 29,651 students given a short suspension (up to four school days) – see also Chapter 4.¹²⁴

Research indicates that Aboriginal children and young people are also more likely to have a disability and/or behavioural support needs. The true rate of disability among Aboriginal people (including children) is likely to be higher than reported, particularly given concerns that developmental disabilities and learning disorders in Aboriginal children are often not adequately recognised or identified.¹²⁵

Notwithstanding this, the 2011 ABS Census of Population and Housing found that, overall, Aboriginal children in NSW had a higher rate of disability requiring assistance than non-Aboriginal children (3.8% compared to 2.0%).¹²⁶ Nationally, it is known that Aboriginal people are nearly four times as likely to have an intellectual disability, and Aboriginal children (under 15) are 3.4 times more likely to be deaf.¹²⁷

119. Department of Education (Dec 2015) *Aboriginal Students in NSW Public Schools Annual Report*.

120. Department of Education, Centre for Education Statistics and Evaluation, *Schools and Students: 2015 Statistical Bulletin*, CESE Statistical Bulletin Issue 5.

121. Department of Education, Centre for Education Statistics and Evaluation, *Government School Student Attendance 2016 (Semester 1)*, CESE Bulletin Issue 18.

122. See NSW Ombudsman (2012) *Responding to child sexual assault in Aboriginal communities*.

123. At the time of our report, we found that the attendance rate for Aboriginal students was poorest in two regions (Western NSW and New England) with the highest Aboriginal enrolment rate – 32% of Aboriginal students enrolled in schools within the 12 communities we examined had missed 30 days or more of school in 2011 and, of these, 17% had missed 100 days or more, which is half a school year.

124. Department of Education, *Suspensions and Expulsions 2015*, <https://www.det.nsw.edu.au/media/downloads/about-us/statistics-and-research/key-statistics-and-reports/SuspensionData2015.pdf>

125. We reported this observation in our 2010 report, *Improving service delivery to Aboriginal people with disability*, about our audit of Ageing, Disability and Home Care.

126. <http://picture.kids.nsw.gov.au/demographic/Diversity-of-NSW-Children>

127. Productivity Commission (2011) *Disability care and support: draft report*, Vol 1 and 2.

Consistent with this, in 2015 Aboriginal students, despite making up just 7% of students enrolled in government schools, accounted for 14% (749) of total enrolments in SSPs¹²⁸ – which cater for students with intellectual and physical disabilities, visual or hearing impairment, behaviour disorders or emotional disturbance, as well as students in juvenile detention.¹²⁹

6.1. Risk factors associated with disengagement from school

Disengagement from school and poor educational outcomes are associated with other indicators of social and economic disadvantage disproportionately experienced by Aboriginal people. Generally, children and young people are far less likely to regularly attend school – and more likely to engage in challenging behaviour and attain poor results when they do – if they live in families and/or communities characterised by high levels of unemployment, inadequate and unsafe housing, family violence, substance abuse and incarceration. The data against these indicators of disadvantage has been amply reported.¹³⁰

Our 2011 review of the circumstances of 48 ‘at risk’ primary school aged Aboriginal children from two high-need communities in Western NSW confirmed that children’s failure to regularly attend school is also often an indicator of broader abuse and neglect. A significant number of the children in our study who had failed to attend school for more than 50 days in a year had substantial child protection histories of abuse and neglect and were living in homes where reports of family violence were prevalent. Many of the children’s parents also had a significant criminal history. Significantly, our review showed that more than half (27) of the 48 children had been suspended on one or more occasions, and often in more than one of the four school years within the relevant period.¹³¹

In our 2012 audit report on responding to Aboriginal child sexual abuse, we identified a clear link between poor school attendance and child sexual assault in high need communities. As part of our audit, we reviewed school attendance and suspension records for 46 school aged children from 12 ‘target communities’ who were reported to police as victims of sexual abuse between 2007 and 2011. The records showed that:

- 28 (61%) had missed 30 or more days of school in the six months before the reported sexual abuse incident and, of these, 10 children had missed 60 days or more of school, and
- seven (15%) of the 46 children had been suspended at least once in the six months prior to the reported sexual assault incident.

In the six months following the reported sexual abuse incident, records were available for an additional two students who by that time were old enough to start school. The records showed that:

- 32 of those 48 children (67%) had missed 30 or more days of school and, of these, 17 children had missed 60 or more days, and
- over the same period, 18 of the 48 children (38%) had been suspended at least once.

A number of children in our study were the subject of more than one reported incident of sexual abuse. These children were more likely to have missed substantial amounts of school overall. We also found that the attendance histories for these children got worse after each additional report of sexual abuse. Those children who had lengthy absences from school both before and following the reported incident of sexual abuse, also had substantial child protection histories.

Aboriginal communities across the state have consistently told us that they consider the failure of many children to regularly attend school, including as a result of suspensions, to be a serious problem requiring urgent attention. They recognise that disengagement from school not only impacts negatively on educational achievement and future employment (and related) prospects, it also distances already vulnerable young people from the supports offered by the school environment, putting them at greater risk of abuse and involvement in anti-social and criminal behaviour.

128. Department of Education, Centre for Education Statistics and Evaluation, *Schools and Students: 2015 Statistical Bulletin*, CESE Statistical Bulletin Issue 5.

129. The data does not include a breakdown of the reasons for the enrolment of Aboriginal children in SSPs.

130. For example, in the Productivity Commission’s annual *Overcoming Indigenous Disadvantage* report cards.

131. See NSW Ombudsman (2012) *Responding to child sexual assault in Aboriginal communities*.

6.2. Our previous recommendations about addressing school non-attendance and keeping children and young people engaged in education

Our public reports have highlighted the level of concern by Aboriginal community members about the number of children and young people in their communities who are failing to regularly attend school. Several community members we consulted spoke about the need for education to be at the centre of case planning for at-risk children, including supporting families to ensure that their children regularly attend school.¹³²

Of particular relevance to the current inquiry, our 2011 report also highlighted that ‘hard to reach’ adolescents who are subject to multiple suspensions are vulnerable to becoming victims or perpetrators of crime. We emphasised the need to review exclusionary suspension practices, and profiled the New England Region’s ‘Mooki Murriss’ mentor program, which was effective in drawing troubled young boys back into the school system. We also recommended changes to recognise the need for strong leadership in schools operating in highly disadvantaged communities and the importance of giving school leaders authority to make decisions that allow them to tailor educational responses to their local community. Finally, we recommended improving the data that is collected, analysed and publicly reported about educational outcomes for Aboriginal students – including the performance of individual schools in relation to key indicators.¹³³

In our 2012 report, we reported on progress against the areas identified in our 2011 report and again emphasised the need for innovative strategies for improving school attendance and engaging vulnerable Aboriginal children in the school environment. We reiterated our 2011 recommendation that the department should consider trialling an intensive attendance case management model. We also recommended that, in consultation with relevant key stakeholders, the department should develop different approaches to keep Aboriginal young people engaged in education, including initiatives that involve funding non-government organisations to provide services to such young people within the school environment as an alternative to suspension.

We highlighted that suspensions which simply exclude students from school for a period of time are also seen by many community leaders and educators as negative in that they remove the protective factor offered by school, placing vulnerable young people at risk of either engaging in, or becoming the victims of, criminal behaviour. Further, any method of suspension that involves a young person being excluded from their usual place of education can backfire because not having to attend school can be regarded by young people as a ‘bonus’ – leading to further poor behaviour aimed at incurring additional suspensions.

A number of principals and regional education directors indicated to us their preference for a more systematic use of ‘in-school’ suspensions – exercising the use of exclusionary suspensions only in situations where very serious risks are evident.

We observed that, while many schools have partnerships with other government agencies and non-government organisations which are aimed at providing welfare and support services to vulnerable students, there appeared to be scope to consider how these services could be expanded and embedded within the actual school environment. However, we noted that the effectiveness of a model of this type would largely depend on the availability of a well-functioning, integrated service sector in local communities. We also stressed that finding solutions for better supporting high-risk adolescents should not be seen as solely the responsibility of schools. In this regard, we have continually argued that this is an area that requires the development of a genuinely integrated plan and related response by human services and justice agencies.¹³⁴ In this regard, an essential component of effective place-based planning and service delivery is knowing how many, and which, children are missing substantial amounts of school. This data is essential for identifying those children who are at risk of educational neglect, and can also provide a window into broader abuse and neglect issues.

132. See NSW Ombudsman (2011) *Addressing Aboriginal disadvantage*, and (2012) *Responding to child sexual assault in Aboriginal communities*.

133. Such as literacy and numeracy; school attendance and related enforcement action; suspensions; risk of significant harm reports in relation to educational neglect; and student retention.

134. See NSW Ombudsman (2011) *Keep Them Safe?* and (2014) *Review of the NSW child protection system – Are things improving?*

6.3. Progress by the department to better engage and support Aboriginal students

Following the release of our 2011 report on addressing Aboriginal disadvantage, the department implemented a number of significant reforms aimed at improving the engagement of Aboriginal children and young people in school and their educational outcomes, in close collaboration with Aboriginal parents, caregivers, communities and the Aboriginal Education Consultative Group (NSW AECG).¹³⁵

The most significant of the reforms the department has embarked on is the *Connected Communities strategy*, a key component of OCHRE (the NSW Government's plan for Aboriginal affairs), which was announced in March 2012. Through our legislated role to monitor the implementation of OCHRE, we are closely monitoring the implementation of *Connected Communities*,¹³⁶ which is also subject to a separate evaluation by CESE.

Connected Communities

Connected Communities aims to build genuine partnerships between schools and their local Aboriginal communities, and to provide Executive Principals with unprecedented authority to tailor education responses to the needs of those communities. The 15 participating schools are intended to operate as 'service hubs', playing a lead role in facilitating services from external agencies to support the learning and wellbeing needs of students.

Overall, the evidence to date suggests that *Connected Communities* is a promising initiative. Many participating schools – particularly primary schools – are clearly providing a safe and positive place for students. We have been impressed with the level of dedication of staff and local communities, and a range of innovative practices aimed at re-engaging children and young people (and their families) with education by making school a positive and meaningful experience. The elements of the strategy designed to involve the local community have been instrumental in improving the capacity of many schools to effectively reach out to parents and community, and increase their engagement with the education system.

We have also witnessed a strong commitment from *Connected Communities* school executive, staff and community representatives to learn from experience and share lessons from both challenges and successes. The relatively small number of schools participating in the *Connected Communities* strategy appears to enable them to trial different approaches and share best practice together.

The central challenge for *Connected Communities* is implementing the intended 'service hub' vision in order to effectively facilitate service provision to address issues that are creating barriers to children's school engagement and learning. While we see examples of positive interagency cooperation to identify and coordinate a response for certain vulnerable children at risk, the service hub model was not yet operating as intended in 2015 when the interim evaluation of *Connected Communities* by CESE was conducted.

Following a recommendation from the interim report to broaden the scope of the Schools as Hubs model, a Framework for Connected Communities schools to facilitate service access for students has been developed and distributed to Connected Communities schools. The Framework includes Local Service Agreements for implementation with key agencies at the local level. The goal is to formalise and promote local interagency cooperation and collaboration by using a place-based model of integrated service delivery that puts the student at the centre, implemented in partnership with parents and carers and the local Aboriginal community.

Executive Principals at *Connected Communities* schools have repeatedly spoken about the urgent need to improve access to adequate child and adolescent mental health services in rural and remote locations. A high proportion of students attending these schools have experienced significant trauma or present with considerable mental health needs. Although some schools have had the benefit of access to mental health assessments for students, limited or no access to ongoing treatment services has been reported as a significant problem. In 2015, we reported that it was abundantly clear the existing availability of school counselling services was inadequate to meet the needs of young people, particularly adolescents. CESE's

135. Department of Education (Dec 2015) *Aboriginal Students in NSW Public Schools Annual Report*.

136. Our observations about this initiative are more comprehensively detailed in our 2014–2015 and 2015–2016 annual reports, and were also echoed in the 2016 interim report on the evaluation of *Connected Communities* by the Centre for Education Statistics and Evaluation.

interim evaluation of *Connected Communities* also found unmet demand for counselling and stressed the importance of addressing the prevalence and severity of trauma-related mental health issues in *Connected Communities* schools. We have also raised this issue with the NSW Mental Health Commissioner and the Children's Advocate.

This goal for *Connected Communities* schools to act as service facilitators for the purpose of providing an effective and integrated response for, among other groups of students, those with significant behavioural and support needs, presents similar challenges and opportunities confronting Network Specialist Centres and other similar interagency initiatives.

The *Connected Communities* strategy provides a strong model for collaborative practice and testing innovative approaches in different sites. It involves a regular coming-together of executive principals with senior practitioners in the department, helping schools to collectively identify and solve problems, as well as share ideas about good practice. We suggest it offers valuable lessons for thinking about how behaviour support is provided to students in schools across NSW.

Since its inception, we have emphasised that, while it will be important for innovative approaches to be tested within the relatively small number of schools participating in *Connected Communities*, the challenge for the department will be in ensuring that lessons learned and gains made are sustained – and applied more broadly across the state.

Healing and Wellbeing Model

The department is attempting to strengthen the ability of *Connected Communities* schools to support the wellbeing of students, staff and community members through the Healing and Wellbeing Model, which provides additional funds to *Connected Communities* schools over four years to establish a culturally responsive wellbeing model to support:

- student wellbeing – including additional staff
- staff wellbeing – consisting of a tailored program to build staff resilience and skills, and
- community wellbeing – building the skills and employability of community members through a tailored training program.

The department has advised us that all schools have used the funding for the student wellbeing component to employ staff with expertise to support the health and wellbeing of students, such as wellbeing teachers, social/youth workers, or Student Learning Support Officers (SLSOs). In a few cases, the funding allocation for school counsellors is being used to engage staff in other wellbeing positions until the requested school counselling positions could be filled. While these roles can provide important support to students, they are unable to make mental health assessments. Greater access to more counsellors as well as other mental health professionals, including psychiatrists and psychologists, is required to ensure appropriate diagnosis and treatment and facilitate ongoing educational engagement and achievement.

The department has sought to recruit school counsellors through a targeted process; however, we understand that there is a significant shortage of available candidates, and that the geographic isolation of *Connected Communities* schools has proved to be a barrier. We have encouraged the department to explore innovative means (for example, through reviewing job classifications which require school counsellors to hold both teaching and psychology degrees or enabling existing teachers to train 'on the job' as psychologists, or vice versa) to increase the supply of school counsellors. The department has introduced incentive packages for school counsellors and school psychologists to work at *Connected Communities* schools. The department has advised that this initiative has had some success.

Arrangements have been finalised with TAFE NSW (Dubbo campus) to provide a Certificate IV Youth Work course for Aboriginal community members, while a staff wellbeing package is under development, based on feedback from staff focus groups in late 2016. These are positive initiatives that, pending demonstrated outcomes, could enhance the capacity of schools and communities in other areas to better meet the needs of Aboriginal students who require behaviour intervention and support.

Transition centres

In 2016, we reported that the department had resolved to develop and fund a flexible model for 'transition centres' in consultation with *Connected Communities* schools in Taree and Coonamble. These schools had identified challenges for students transitioning back into the classroom, particularly those who have had involvement with the justice system or other circumstances that have resulted in long periods of absence. The transition centres, which were operational by the second half of 2016, include:

- a dedicated space, classroom teacher and Aboriginal SLSO
- different teaching and learning methods based on the syllabus Key Learning Areas that draw on connection to community and culture, and
- access to wrap-around services for the students and their families.

Since then, Bourke High School has also been progressing a transition initiative, in response to a community-identified need, with the aim of providing additional support to a group of chronic non-attending students (most of whom have been assessed as having specific needs).

We understand that the funding allocated to the transition centres will cover the initial 'start-up period', and their sustainability will depend on the involved schools committing to covering ongoing costs from their school's budget.

The ultimate aim of transition centres is to successfully transition students into formal education, work or training.

The case studies below provide details about the transition centres in Coonamble and Manning Valley (which includes Taree).

Coonamble High School transition centre

The primary aim of the Coonamble High School transition centre is to provide intensive, targeted support to assist both chronic school non-attendees and students returning from connection with the justice system to transition back into mainstream schooling.

In the design, it was recognised that cultural advice would be critical, as a majority of students referred to the transition centre are Aboriginal. The local Aboriginal community was engaged via the School Reference Group and local Elders to help shape the centre's program. Staffed by a classroom teacher and an SLSO (both of whom are Aboriginal with local connections) and strongly supported by the school's Deputy Principal/Head Teacher Learning and Support, the centre strives to build student connections to community and country, while also providing a safe and nurturing environment with a strong focus on healthy daily routines.

The centre was initially temporarily based at the local TAFE (with students enrolled in courses) and the school executive is currently seeking a permanent home for the centre in an old training building that is adjacent to the school.

The transition centre currently caters for 10 students. It operates from 8am to 2pm, as the school had observed that frustrations built, and related violent incidents tended to happen after lunch. The 'group dynamic' at the centre is carefully assessed and monitored by staff each day. The consistent location and staff, in contrast to multiple teachers and classrooms in the school, provides stability which the students appear to appreciate.

Staff try to build 'networks of support' around the students by positively engaging with local services (including Mission Australia and the Aboriginal Medical Service) and by involving them in the Murdi Paaki Regional Enterprise Corporation's (MPREC) mentoring program. The aim is to help students see these services as safe places to seek assistance, if they need them in the future. The centre has also worked hard to rebuild bridges with local services and organisations where these have been weakened by allegations of previous anti-social or criminal behaviour by students. Local police and council youth workers have also been invited to engage with the students at the centre to increase mutual understanding and break down barriers that can otherwise have an enormous impact on young people's lives in a small town setting.

At the time of writing, the transition centre had been operating for less than 12 months, yet there appear to be promising early outcomes. Attendance by individual students has reportedly improved and the total number of student suspension days has significantly reduced – down to 12 days from 52 days at the same time last year (before the transition centre opened).

Manning Valley Learning Centre

In 2014, the principals of Taree (a *Connected Communities* school), Wingham and Chatham high schools came together to discuss how they could best support students at risk of disengaging from school in the area. The discussion arose because some students were exhibiting very challenging behaviours, including violence, extreme anxiety and 'school-phobia', which were interfering with their ability to attend school. A number of students had received multiple suspensions and were at risk of expulsion; others were failing to attend school because of a fear of peer ridicule of their personal circumstances (such as poverty or pregnancy). Together, the three schools typically had around six students in juvenile justice detention at any one time, and how to support them to return to school after their time in detention was also a concern.

The principals decided to collaborate and pool resources to establish the Manning Valley Learning Centre, a facility aimed at providing a safe and nurturing environment to address the individual support and educational needs of identified students. The centre currently caters for 18 students, most of whom are Aboriginal. Through a partnership with Camden Valley Distance Education, tailored learning packages are provided to suit the interests and needs of each student. While the centre's teaching and learning support staff assist students with their studies, the approach goes beyond focusing on their schoolwork. Learning centre staff try to create a supportive 'network of care' around each student. They maintain close communication with parents/carers, OOHC services and juvenile justice liaison officers. The centre also invites local services to provide talks and short courses for the students on topics such as drugs and alcohol (Biripi Aboriginal Medical Service), financial literacy (Smith Family), cyber safety (police), careers and further education pathways (TAFE).

While an identified goal of the centre is to transition students back into a mainstream school environment, the principals and centre staff recognise that this may not be a suitable option for every student. Where appropriate, once students are 15 or 16 years of age, the centre assists them to consider post-school options such as TAFE, a traineeship or a disability industry placement, or employment. Staff actively assist in brokering the various opportunities available for students in their local area.

As one of the three participating schools is a *Connected Communities* school, the department provided funding in 2017 for a head teacher and Aboriginal-designated SLSO position, which has been a welcome increase to the centre's staffing capacity. However, we understand that the increased staffing may not be sustainable beyond the current year without additional funding from the school.

Chapter 7. Interagency collaboration

In our investigation into the department's suspension policies and procedures in 2007–2008, we observed that schools can sometimes be well placed to know of significant family dynamics behind misbehaviour that contribute to a student being suspended; however, they cannot always be expected to know of, and be capable of dealing with, all of the broader issues behind the misbehaviour. In this regard, we found that joint planning and intervention was clearly needed from other agency partners.

In the previous chapter – and throughout this report – we have referred to various initiatives in which the department is involved, where it and other partner agencies are seeking to deliver a coordinated, multi-disciplinary response to support students with complex needs and challenging behaviours. This approach recognises the significant issues in play for many of these students and that, generally, the issues facing them cannot be dealt with by the school alone.

This inquiry, and our ongoing work, has shown that government and non-government schools are involved in a significant number of collaborative initiatives with other government and non-government agencies. For example, many schools work with other agencies to, among other things, help students to attend school and engage in learning; assist students to gain access to health and other supports; and provide support to families to directly improve the circumstances of the students. With regard to students with complex needs and challenging behaviour, it is pleasing to see good examples of schools working effectively to:

- identify families at risk and linking them with services to support students to attend school
- enable students with mental health concerns to access CAMHS and other mental health supports on site, and
- support students to access therapy services.

Despite examples of good practice by schools in seeking to work with agency partners in supporting students with complex needs and challenging behaviours, there is a growing recognition that a stronger 'systems' model is needed to deliver the coordinated, multi-agency response which is often required. As discussed in the previous chapter, the *Connected Communities* strategy recognises this need. In this chapter, we discuss some of the critical issues which need to be addressed to deliver efficient and effective interagency practice.

7.1. Networked Specialist Centres

One of the most significant initiatives of the department aimed at both strengthening its own support for students with complex needs and challenging behaviours, as well as providing a coordinated multi-agency response, is the progressive establishment of networked specialist centre facilitators from 2014 to 2017.

The initial four centres have recently been expanded to 22, with the majority (15) based in regional and rural areas of NSW. The department has advised that when a student's needs reach a level of complexity that requires additional case coordination and/or integrated service delivery, the networked specialist centre is available to add an extra level of expertise to support the work of both the involved school and specialist support staff in addressing complex learning, wellbeing, and behaviour needs.

In addition, the networked specialist centre facilitators are meant to assist and manage local interagency coordination and service delivery as a way of supporting schools to support their vulnerable students and their families.

The department has recently advised that it is refining the role of the facilitators to:

- better build systematic interagency relationships with other government and non-government agencies
- establish and maintain a sustainable network of specialist support services
- lead complex case coordination, and
- facilitate and support cross-agency initiatives and local solutions identified by a group of schools that address the complex needs of students.

Relevant to the issues raised in Chapter 5, the department has also advised that it is looking at how it can provide better, and more coordinated, support for students in OOHC, and has identified that the networked specialist centres will be an important resource in this regard. The department has told us that the centres will have access to a range of services, and the capacity to elevate issues when needed.¹³⁷

We acknowledge that networked specialist centres and their facilitators could potentially play a critical role in relation to supporting students with complex needs and challenging behaviours. In our consultations, we received feedback from most school representatives that there is considerable potential in the creation of these centres, but that they had not yet seen the desired results in practice.

While many noted that the centres could be an effective vehicle for bringing services together to determine how best to support students and their families, it was stressed that the success of this goal relies heavily on the facilitators having good connections and relationships, and that this has generally not been the case so far. In this regard, we were also told that the facilitators have a big task and large geographical areas to cover, and therefore strong leadership skills are required to do their job effectively.

Despite these reservations, we were pleased to receive positive feedback about the networked specialist centre in Wollongong, which reportedly has good connections with both FACS and non-government community services; we were also advised that the centre is co-located with FACS, making it easier to jointly manage complex cases.

7.2. A well-calibrated interagency response

A well-calibrated interagency response involves the provision of wrap-around services for students with complex needs. In fact, a key component of the role of networked specialist centres is facilitating wrap-around services for students with complex needs.

The department has a range of initiatives associated with a wrap-around service approach. For example, School-Link is designed to provide access to specialist mental health services to children and young people in schools and TAFE, and is being delivered in approximately 3,000 schools. During our consultations, a number of schools spoke about the positive involvement of child and adolescent mental health services (CAMHS) through School-Link, including CAMHS staff meeting with students at school to make it as easy as possible for them to access support. However, we also heard from a range of parties in different regions that there can be difficulties gaining access to this service if the student with mental health needs has not had prior CAMHS involvement. As noted in the previous chapter, substantial challenges in gaining access to CAMHS for mental health assessment and treatment have been identified by a range of parties, including our office, in relation to Aboriginal students and *Connected Communities* schools.

7.3. What is required to achieve an effective interagency response

It is important to acknowledge the potential of the recent models aimed at achieving an effective interagency response to students with complex needs and their families. However, to be effective, these types of interagency models require, among other things, the right governance arrangements.

Since 2012, we have been arguing for the development of a robust framework to drive responses to vulnerable children and young people. From our perspective, regardless of the specific cohort of vulnerable children and young people, core systems challenges need to be addressed.

In our 2012 report on responding to Aboriginal child sexual abuse, we highlighted that the two main multi-agency case management models that were operating in NSW at the time – Supporting Children, Supporting Families, and Family Case Management – were failing to deliver on their goal of providing effective support to very vulnerable children and their families.¹³⁸

137. NSW Ombudsman meeting with Department of Education representatives, 23 May 2017.

138. See for example, NSW Ombudsman (Dec 2012) *Responding to child sexual abuse in Aboriginal Communities*.

In our 2014 report, *Are things improving?*,¹³⁹ we again noted that an evaluation of the Supporting Children, Supporting Families program highlighted concerns about weak governance processes and poor accountability, and confirmed that there had been disappointing practical outcomes from the program over its seven years of operation. We also observed that an evaluation of Family Case Management found that its trial sites in Western NSW experienced acute difficulty in getting families with complex needs to engage with the program, and that contributing factors included limited capacity of staff to case manage clients with multiple and complex needs; a lack of training; and local community distrust of participating services.

The lessons from both programs demonstrate the central importance of creating strong local and regional governance arrangements to drive interagency case management initiatives, and the need to build a comprehensive, integrated service system within local communities over time. In our view, the conclusions we reached in our earlier reports are relevant to the interagency initiatives that the department is seeking to implement. In particular, we have previously observed that:

...various iterations of integrated case coordination panels/committees continue to operate across the state – some more successfully than others. Regardless of the particular label under which these initiatives are operating, if the longstanding issues of cross-agency governance and leadership are not effectively addressed, then it is unlikely that newly-badged initiatives will be any more successful than earlier attempts to coordinate agency efforts.¹⁴⁰

Finally, it is also essential that there is close monitoring of whether the desired outcomes are being achieved, and ongoing refinement to the operating frameworks based on the findings of ongoing process and outcome evaluations.

7.4. The impact of the NDIS

One other critical element which needs to be carefully considered in terms of delivering an effective, coordinated response aimed at addressing the needs of students with disability is the potential impact of NDIS funding and related support for some of these students.

By way of background, the transition to the NDIS involves significant changes to how specialist disability supports are funded and delivered, including the progressive withdrawal of FACS' Ageing, Disability and Home Care (ADHC) as the lead agency for both funding and providing specialist disability supports.

It is important to note that this change brings additional challenges for schools in undertaking interagency work, with a shift away from engaging a known government agency to potentially having a range of services engaged with the child with disability.

It is also important to recognise that any interagency assessment response should conform with good practice in relation to behaviour support, which requires a comprehensive assessment and analysis of the meaning and function of behaviour in a whole-of-life context – including, for school-age children, home and school.

In terms of the NDIS' responsibilities, the scheme 'will fund supports that enable participants to attend school education, where these supports are required by the participant to engage in a range of community activities'.¹⁴¹ The NDIS Applied Principles and Tables of Support indicate that NDIS responsibilities include (among other things) 'specialised support and training for school staff related to the specific personal support needs of a student with disability, including specialised behaviour intervention and support'; personal supports such as feeding, and managing ventilation; specialist transport required because of the student's disability; the coordination of NDIS supports with the supports offered by the school education system and other relevant service systems; and funding and coordinating allied health and other therapies to support a student's functional capacity.

139. See section 4.2.2, Addressing identified problems in relation to integrated practice.

140. NSW Ombudsman (Dec 2012) *Responding to child sexual abuse in Aboriginal Communities*.

141. NDIS fact sheet, *Mainstream interface: School education – Supports the NDIS will fund in relation to education*, https://www.ndis.gov.au/html/sites/default/files/documents/fact_sheet_supports_ndis_fund_education.pdf

However, the education system retains responsibility for (among other things) assisting students with their educational attainment, including making reasonable adjustments to the school curriculum; learning assistance and inclusion support to enable participation in education services, in line with reasonable adjustment; and therapy delivered in schools for education purposes, such as allied health practitioners assisting classroom teachers to make adjustments to the curriculum.¹⁴²

In addition, a critical part of the shift to the NDIS relates to 'choice and control' resting with the participant and their families (in relation to children). While this focus is positive, it means that there will need to be an alignment between the principles of 'choice and control' which underpin NDIS funding and supports, and the strategies being developed by the school and other agencies to support the involved students and their families. Therefore, future multi-agency work with students with disability and their families must not only have the elements of strong interagency practice that we have referred to above, it also needs to include a strong and effective partnership with the involved students and their families. In making this observation, we note that effective management with clients is critical to the success of any intra or interagency response which is designed to meet the client's needs.¹⁴³

Relevant to these issues, it is pleasing to note that, during our consultations with disability sector representatives, they provided a number of positive examples of schools working with students with disability and their families, in which strong partnerships were formed. For example, they referred to the benefits that had resulted from the start of regular meetings at school, the creation of a 'team around the child', and the identification of shared goals.

142. COAG *Principles to determine the responsibilities of the NDIS and other service systems*, November 2015, www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf.

143. We have made this same point in the context of our child protection work and broader work with Aboriginal communities.

Chapter 8. Governance

In key areas, our work has identified significant differences between requirements/policy and practice in schools – including actions that have deviated from requirements and acceptable practice over an extended period of time.

In relation to monitoring the implementation of processes and policies in public schools, the department has implemented an A-Z Policy Implementation Tool (AZT) since Term 3, 2016, which requires principals to provide evidence of implementation by providing responses and supporting evidence as to:

- how the policy is being implemented to meet student, staff and community needs in the school context
- how the school has consistently observed and applied all policy requirements, and
- what processes are in place to review the school's implementation in relation to the policy.

However, NESA has advised that the AZT has been out of action for most of 2017, and information has not been provided by the department as to when it will be available again.

In relation to monitoring and managing the performance of principals in public schools, the department has advised that the Performance and Development Framework and the School Excellence Framework have been in place since 2015:

- Principals, in consultation with their Directors, Public Schools NSW, develop a Performance and Development Plan that is linked to the policies, aims and strategic directions of the department. A principal's performance and development is assessed on an ongoing basis throughout the year, with two six-monthly formal review points.
- Under the School Excellence policy, schools develop three-year school plans by consulting with their communities; self-assess and report annually on their progress using the framework; and will have their self-assessments validated by an external panel within a five-year cycle.¹⁴⁴ The annual report on outcomes comprises a key requirement of principal accountability.

There are currently 65 Directors, Public Schools NSW, who provide line management to principals (with direct reports of 20–40 principals). The Directors are to ensure that principals are accountable for the effective leadership and management of the school; achieve key accountabilities; meet the personalised learning needs of students; and achieve the best possible outcomes. Their responsibilities include monitoring school planning and annual reporting processes for compliance with legislative and policy requirements.

Directors are required to provide information to the four Executive Directors, Public Schools NSW, on the effective implementation of policy and to report any significant concerns about how the policy has been applied in an individual school or within their network of schools. Part of the role of the Executive Directors is to oversee and monitor schools' compliance with legislative requirements relating to Aboriginal Education, diversity, disability, and child protection, and to ensure corrective action is implemented to meet compliance and legislative objectives.

Governance arrangements in non-government schools are diverse, with principals variously reporting to a board, management committee, or Diocese.

We note that some of the arrangements for monitoring the compliance of public schools with policy and practice requirements are relatively new. The combined arrangements potentially provide useful mechanisms for tracking implementation, with some level of external checking by NESA and the external validation panels. However, it is important that other opportunities are used to examine practice in schools. In particular, there is a need to:

- as part of the roll-out of the Synergy data system across schools, examine the adequacy of the data that is captured in relation to key policies and that is able to be critically examined by Directors and others, and

144. In 2015, all public schools in NSW undertook their first self-assessment using the framework; the first cycle of validations of every school across NSW commenced in 2016 and will be completed in 2020.

- ensure that other sources of information, such as allegations against employees or significant concerns raised about a school, trigger a closer examination of school practice by Directors – for example, particular allegations (such as those relating to the use of restrictive practices) should prompt an examination of existing systems and practice in the school, irrespective of whether the allegations are substantiated, or whether the matter is investigated or locally managed.

There is also a need to overlay the new arrangements for monitoring school practice and performance with a thorough and rigorous auditing process that is well calibrated to risk – to ensure regular, independent reviews of practice, carried out in the context of a sophisticated risk management framework.

Reporting on the use of Integration Funding Support

In relation to the specific issue that has been raised regarding the transparency and accountability in the use of the Integration Funding Support component of funding provided to schools through the RAM, there is merit in reviewing the existing reporting requirements for schools in this regard. Accountability for the effective use of the funds to improve student learning is supposed to occur through annual reporting against the school plan. However, while annual reporting by schools includes specific reference to the use of the separate equity loadings, it does not appear to include reporting against the use of the Integration Funding Support component. In our view, there is a need to look at facilitating greater accountability in relation to this aspect of the funds provided to schools through the RAM so the school community, including families, know it is being well calibrated and used for the benefit of the individual students with disability.

In response to our draft report, the department advised that the approach to reporting in the school plan is to provide ‘evidence of improvement in student learning outcomes not report on individual funding lines’, and a single funding line ‘does not equate to the range of support being provided for a student attracting IFS’. The department advised that it is ‘not appropriate for funding provided to schools to support individual students to be reported on in the school plan’, and noted that each student attracting IFS will have a personalised learning and support plan that will be part of the conversations with the parent/carer.¹⁴⁵

In relation to this issue, we take on board the department’s feedback regarding the nature of the reporting that is undertaken via the school plan. However, there is a reasonable expectation on the part of the school community, including families, that there should be greater transparency in relation to this issue. In light of the advice that the school plan is not the appropriate vehicle for schools to report on the use of IFS, the department needs to look at how it can provide public reports of a different nature, consistent with a requirement to demonstrate the requisite level of accountability.

145. Department of Education response to NSW Ombudsman draft report, 28 July 2017.



PART 2

Reportable conduct allegations involving students with disability and additional needs, and complaint handling

Chapter 9. Responding to reportable conduct allegations and complaints

To inform our evidence base for this inquiry in relation to relevant reportable conduct allegations and complaints, we:

- engaged an independent consultant to review a sample of ‘reportable conduct’ cases overlooked by our office in which the alleged victim was a student with disability, together with a sample of complaints handled by our office about the department’s treatment of students with disability, and
- audited the department’s handling of ‘child protection matters’ which were referred by schools to EPAC but were not notified to our office.¹⁴⁶

9.1. The Ombudsman’s role in overseeing reportable conduct

Our employment-related child protection jurisdiction involves our office overseeing the handling of reportable child protection allegations that are made against employees and certain volunteers of thousands of government and non-government agencies in NSW. Part 3A of the Ombudsman Act (the Act) involves the Ombudsman:

- receiving and assessing notifications concerning reportable allegations or convictions against employees
- scrutinising agency systems for preventing reportable conduct by employees, and for handling and responding to allegations of reportable conduct and convictions
- monitoring and overseeing agency investigations of reportable conduct
- responding to complaints about inappropriate handling of any reportable allegation or conviction against employees
- conducting direct investigations concerning reportable allegations or convictions, or any inappropriate handling of, or response to, a reportable notification or conviction
- conducting audits and education and training activities to improve agencies’ understanding of, and responses to, reportable allegations, and
- reporting on trends and issues in connection with reportable conduct matters.

Under Part 3A of the Act, an ‘employee’ is defined broadly as including any employee of the agency, whether or not employed in connection with any work or activities of the agency that relates to children, as well as any individual engaged by the agency to provide services to children (including in the capacity of a volunteer).

All public authorities are subject to the requirements of Part 3A if the reportable conduct arises in the course of a person’s employment. Some public authorities are ‘designated agencies’ and also need to notify reportable allegations if they arise from conduct that takes place outside of employment.¹⁴⁷ Certain non-government organisations are also ‘designated non-government agencies’¹⁴⁸ – including non-government schools, approved children’s services and agencies providing substitute residential care. These agencies are also subject to Part 3A requirements and must notify reportable allegations that arise both within and outside of employment.

146. The Department of Education and the NSW Ombudsman’s office have a ‘class or kind determination’ which defines the type of allegations which do not require notification to our office.

147. Section 25A defines ‘designated government agency’ and includes, but is not limited to, the following agencies: the Departments of Education, Family and Community Services, Health, and Justice.

148. Section 25A defines ‘designated non-government agency’ and includes the following types of agencies: a non-government school within the meaning of the *Education Act 1990*; a designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*; an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)* or the *Children (Education and Care Services) Supplementary Provisions Act 2011*; an agency providing substitute residential care for children, or any other body prescribed by the regulations for the purposes of this definition.

When an allegation of ‘reportable conduct’ is made against an employee of a relevant government or non-government agency, the head of agency is required to notify the Ombudsman of any reportable allegations or convictions involving their employees as soon as practicable, and the ‘notification’ must be made, in any event, within 30 days of the head of agency becoming aware of the allegation or conviction.¹⁴⁹

Section 25A of the Act defines ‘reportable conduct’ as:

- a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence), or
- b) any assault, ill-treatment or neglect of a child, or
- c) any behaviour that causes psychological harm to a child, whether or not, in any case, with the consent of the child.

The provision also specifies that reportable conduct does not extend to:

- a) conduct that is reasonable for the purposes of discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or
- b) the use of physical force that, in all circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or
- c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the Act.

We encourage agencies to notify us at the earliest possible opportunity, whether by way of formal notification or through telephone contact, so that we can play an early role in guiding agencies through their initial response. Agencies are expected to respond to allegations by conducting an investigation, and undertaking any risk management or other action which may be required.

Upon receipt of a notification, the role we play varies depending on the circumstances. We may actively monitor the progress of an investigation, in which case we will require the agency to provide us with relevant documents and information about the investigation. We also have the power to observe interviews conducted by or on behalf of an agency, and confer with those involved in conducting the investigation. At the end of their investigation, the involved agency must provide us with a range of information, such as the report and advice on any action taken as a result of the investigation.

We also have the power to directly investigate any reportable allegation, as well as the involved agency’s *handling* of a reportable allegation.

Improving data capture about the disability status of alleged victims

Following his review of our data holdings in 2015 relating to children with disability and reportable allegations, the Community and Disability Services Commissioner sought to improve the integrity of our data capture for this cohort. While we had been capturing the disability status of alleged victims, our data capture was based on the assessment made by the reporting agency, and our review of cases revealed inconsistent assessment practices across the various sectors in relation to the identification of children with disability. To remedy this, we consulted firstly with the schools sector to determine the best process and to develop related business rules.

It was agreed that aligning our data with the Nationally Consistent Collection of Data on School Students with Disability used by schools was the best approach for the schools sector, as well as for other key sectors (such as the OOHC and early childhood sectors). In response, we amended the standard notification form to not only require agencies to advise us if an alleged victim has a disability, but to also identify whether the disability is physical, cognitive, sensory or social/emotional. These changes allow us to better assess whether agencies are providing appropriate support to alleged victims through the investigation process.

149. Section 25C requires the head of agency to ‘make arrangements within the agency to require employees of the agency to notify the head of agency of any such reportable allegation or conviction of which they become aware’.

Our most recent data relating to reportable conduct and students with disability or additional support needs is discussed below.

The schools sector – a snapshot of reportable conduct allegation data

In 2016, we finalised 1,132¹⁵⁰ cases that we oversighted that year. Thirty per cent (338 out of 1132) were from the combined schools sector.

Of the total number of notifications from the schools sector, the department (government schools) was responsible for the majority, comprising 57% (191 out of 338). The remaining 43% (147 out of 338) came from the non-government sector (comprising Independent and Catholic systemic schools).

Disability and additional support needs

Twenty-six per cent (295 out of 1,132) of the notifications closed over the reporting period involved a child with disability or additional support needs.

Of the notifications from the combined schools sector closed over the reporting period, 12% (41 out of 338) involved a child with disability or additional support needs.

Sustained rates over the reporting period

Of the matters finalised over the reporting period:

- The overall sustained rate for notifications relating to the schools sector is 23% (78 out of 338), compared to 28% (317 out of 1132) across all sectors.
- The overall sustained rate for notifications involving children with disability or additional support needs relating to the schools sector is 10% (4 out of 41), compared to 24% (71 out of 295) across all sectors.

Criminal charges – open notifications

Of the current open notifications, 10% (159 out of 1,527) involve individuals who have been charged with one or more child-related offences. Twelve per cent of these criminal charges (19 out of the 159) involve a child with disability or additional support needs.

Forty-nine per cent (78 out of 159 charges) involve individuals employed in the schools sector. Of these 78 matters, 5% (4 out of the 78) of these criminal charges involve a child with disability or additional support needs.

Table 5: Charges by school sector and allegation type – open notifications

Type of charge (primary only)	Sector			Total number
	Government education	Non-government education	Other sectors	
Sexual	39	30	66	135
Physical	8	1	15	24
Total	47	31	81	159

Later in this chapter, we discuss the data in the context of the findings from the independent consultant’s review.

Class or Kind determinations – conduct excluded from notification to the Ombudsman

Section 25CA of the Ombudsman Act permits the Ombudsman to determine that certain kinds of allegations are exempt from the reporting requirements which apply to agencies within our jurisdiction. In the context of the schools sector, this means that there are certain allegation types, such as allegations of ill-treatment, and certain types of physical assault and neglect allegations, which are not the subject of oversight by this office.

150. During the same period we closed 1,413 notifications. After reviewing initial holdings in these matters we decided to oversight 1,132 matters.

Department of Education

As previously noted, the department is responsible for the largest number of notifications from within the schools sector. The department has centralised its handling of reportable conduct allegations under its Employee Performance and Conduct Directorate (EPAC).

In the context of the department having in place a centralised unit of specialist staff to drive a consistent response to reportable conduct allegations, in 2010 we executed a class or kind determination which excludes the following conduct from notification to our office:

*3.1.5 **No allegation of ill-treatment** need to be reported to the Ombudsman as a reportable allegation, unless it is alleged that:*

- a) *The ill-treatment resulted in significant physical harm to a child or a real and appreciable risk of such harm to a child; or*
- b) *A child suffered psychological harm as a result of the ill-treatment.*

3.1.6 If an allegation of ill-treatment specified in 3.1.5 is reported to the Ombudsman as a reportable allegation, relevant documentation of the management by the DET or TAFE of any previous exempted matters concerning the employee must be provided to the Ombudsman attached to the notification of the reportable allegation, unless previously provided.

In relation to alleged conduct referred to in clause 3.1.5, the department is nevertheless required to investigate the allegation, undertake a risk assessment, and take appropriate action resulting from the investigation. As well, adequate records are required to be maintained and provided to the Ombudsman, and be made accessible for auditing purposes by the Ombudsman. Our determination with the department also excludes certain allegations of neglect and physical assault.

Catholic systemic schools

Catholic systemic schools account for the second largest number of primary and high school enrolments in NSW. There are over 580 Catholic schools in NSW¹⁵¹ and the vast majority of these are systemic. Catholic systemic schools are administered directly by the Catholic Education/Schools Office (CEO/CSO) within each Diocese. Since 2006, we have had identical class or kind determinations with the CEO/CSO of each Diocese. The current class or kind determinations with individual Dioceses exempt the CEO/CSO from notifying certain allegations of physical assault.

Other non-government schools

Strengthening the business relationship with the AISNSW, and in more recent times, Christian Education National (CEN) and the Christian Schools Association (CSA), has been important in enhancing the reportable conduct across the Independent schools sector. Together, these three bodies represent and support more than 400 Independent schools across NSW.

According to NESA, in 2017 there are 381 individual non-government schools¹⁵² in NSW, including 54 independent (congregational) Catholic schools operated by the Religious Institutes of brothers, nuns and priests (or by their agents).¹⁵³

There are also 18 systemic non-government schools operated by Seventh-day Adventist Church Schools NSW.

In 2016, the NSW Independent schools sector enrolled more than 186,000 students in primary and secondary schools, representing 16% of all students in NSW.¹⁵⁴

151. Figure cited by Catholic Education Commission NSW, www.cecnsw.catholic.edu.au, [Accessed 30 June 2017].

152. Information provided by NESA, 3 July 2017.

153. These schools undertake their own administration, with some support from their local Diocesan CEO/CSO.

154. Association of Independent Schools NSW 2016 Annual Report.

Over a number of years, the AISNSW has made significant investments aimed at raising practice standards among its membership. For instance, it sought to accredit child protection investigators over a decade ago, and has a dedicated Workplace Management unit which provides a range of child protection advice, response management, policy and procedures audits, and investigative and risk management services.¹⁵⁵ In more recent years, we have also worked with CEN and CSA. CSA has 43 member schools in NSW,¹⁵⁶ while CEN represents 17 schools in NSW.¹⁵⁷ Some members of CSA and CEN are also affiliated with the AISNSW.

In 2010, we worked with the AISNSW around further strengthening its processes for supporting, training and accrediting member schools. We subsequently expanded the class or kind determination with the AISNSW and participating member schools in 2012. The current determination with the AISNSW exempts notification to us of:

First time reports of hitting a child; or inappropriate but minor and transitory restraint of a child; or an incident of inappropriate pushing and pulling a child, provided that

- a) *the conduct does not involve the use of physical force being applied to any part of the head or neck, or to any other part of the body likely to cause more than short term (or transitory) harm.*

However, the determination does not exempt ill-treatment from having to be notified.

In relation to conduct of the class or kind exempted by the determination, heads of agency must abide by certain conditions, including notifying the AISNSW of the allegation; engaging an AIS-accredited investigator; and seeking the support and advice of the AIS at key milestones during the investigation. The determination also requires the AISNSW to maintain a database of completed class or kind investigation notifications in relation to allegations of reportable conduct.

In 2011, we entered into class or kind determinations with the CSA and the CEN and their participating members. Our decision to enter into the determinations with CSA and CEN was contingent on both bodies submitting detailed proposals for the establishment of a more robust system for the provision of child protection advice, training and support to their members.

The current determinations with CSA and CEN exempt notification to the Ombudsman of the same conduct exempted by our determination with the AISNSW, but have some additional caveats, including a requirement for schools to outsource to accredited investigators all investigations of allegations of serious reportable conduct.¹⁵⁸ In addition, for all matters involving clear allegations of criminal conduct, and for other complex matters, the determinations require schools to carefully consider whether they have the competency to properly investigate the allegations (if not, the investigation should be outsourced to an 'approved' investigator).¹⁵⁹

9.2. Our audit of child protection matters handled by EPAC

To further inform our assessment of how the department handles child protection-related allegations against its employees involving students with disability, it was important for us to not only examine those reportable conduct matters notified to our office by EPAC, but to also review a sample of reportable conduct matters that the department was not required to notify to our office consistent with the class or kind determination.

In addition, we wanted to assess how EPAC was handling other inquiries it receives from schools about child protection matters involving students with disability that, while not meeting the threshold of reportable conduct, still require effective resolution.

In the following section we outline the role of EPAC in handling child protection allegations and complaints, and the key findings from our audit.

155. The unit also provides work health and safety audits and inspections.

156. Information sourced from www.csa.edu.au, [Accessed 30 June 2017].

157. Information sourced from www.cen.edu.au, [Accessed 30 June 2017].

158. Serious reportable conduct includes alleged child-related sex offences by employees; alleged physical assaults by employees against a child or a young person that involve a) serious injuries to the head and/or body of children including burns; fractures; lacerations; internal injuries or significant bruising, b) the violent shaking of a young child; matters where there is evidence of inappropriate or improper conduct of a kind that gives rise to a suspicion, on reasonable grounds, that the involved employee may have committed, or may commit, a sexual offence against a child or young person.

159. The determination also imposes a range of requirements on CEN, particularly in relation to providing adequate support to member schools and monitoring their use of the determination.

The role of EPAC

Where an allegation or complaint of a child protection nature is made against an employee of the department, or someone who is engaged by the department to work with students in schools, it must be notified to EPAC.¹⁶⁰ In its draft 2017 Guidelines – *Responding to Allegations against employees in the area of child protection*¹⁶¹ – an allegation of a child protection nature is defined as:

An allegation of misconduct or inappropriate conduct by an employee, which involves conduct with, towards, about or in the presence of a child or a young person. Such conduct must be notified to EPAC.

EPAC will assess the matter and, where appropriate, investigate allegations against departmental employees and ensure relevant allegations are referred to the appropriate agencies, including the Ombudsman, the Department of Family and Community Services and the NSW Police Force.¹⁶² A significant proportion of the matters that are brought to EPAC's attention are capable of being resolved in the workplace using complaint management and performance improvement processes. However, EPAC encourages schools to make contact with them if they have any questions about a matter or if they need further advice on the best way to handle it.

Parents and other interested parties can complain directly to EPAC or can complain to a school or another section of the department. However, allegations of a 'child protection nature' (not only those which appear to meet the threshold of reportable conduct) should be referred to EPAC, regardless of whether the matter was raised directly with the school or elsewhere in the department.

As well, EPAC has a role in investigating allegations involving broader misconduct by the department's employees (and other relevant individuals engaged by the department); for example, in relation to alleged breaches of the department's Code of Conduct or fraudulent conduct.

Annually, EPAC handles more than 3,000 inquiries from schools, parents, and other sources. As we discuss below, a significant proportion of these matters are also directly investigated by EPAC and, where the matter is referred back to schools or to another division to handle at the local level, it provides advice and guidance to the school, and in certain circumstances will also oversee the handling of the matter.

How does EPAC respond to notifications?

According to its draft responding to allegations guide, options for responding to a notification include:

- Referring the matter back to the workplace manager for action with no further EPAC involvement because the matter is not reportable. The workplace manager is expected to take appropriate action, which will include speaking to the relevant parties to resolve the matter.
- Oversighting the local management of the matter in consultation with the workplace manager.¹⁶³
- Investigating the matter under the relevant guidelines and where the allegations are reportable, notifying the Ombudsman about the allegations within 30 days.

As part of its assessment process, EPAC will seek to identify whether the particular allegation is suitable for handling at the local level under EPAC oversight. The aim is to facilitate the timely resolution of less serious allegations. As part of assessing whether a matter is suitable for local management, EPAC generally discusses the matter with the relevant workplace manager. Matters will only be handled locally where the workplace manager and the subject employee agree to the matter being dealt with by the workplace manager. Where there is no such agreement, the matter may proceed to an investigation, although in some circumstances, an alternative manager may be sourced to undertake the local management response.

160. Draft NSW Department of Education Employee Performance and Conduct Directorate, *Responding to Allegations Against Employees in the Area of Child Protection 2017*, p1.

161. Draft NSW Department of Education Employee Performance and Conduct Directorate, *Responding to Allegations Against Employees in the Area of Child Protection 2017*, p9. These Guidelines have existed since 2010 but are currently being revised.

162. Draft NSW Department of Education Employee Performance and Conduct Directorate, *Responding to Allegations Against Employees in the Area of Child Protection 2017*, p7. Principals usually refer allegations directly to FACS or Police.

163. For certain notifiable matters, EPAC will notify the Ombudsman and indicate whether the matter is being managed locally where this is deemed appropriate.

EPAC has developed procedures for local managers relating to the handling of less serious child protection allegations against employees. They include a checklist of required action and forms to document the outcomes of the process. EPAC investigators will also provide direct support to all local managers who are looking into less serious allegations.

At the completion of the process, all relevant documentation is provided to EPAC to allow it to make a final determination on the matter, at which time the outcome will be conveyed to the student's parents/carers and the subject employee(s).

Our audit methodology

On 22 May 2017, we requested information from EPAC to assist us to develop a suitable audit sample of matters involving students with disability. We focused on matters received and finalised by EPAC in 2016.

EPAC advised us that during the 2016 period, it received and responded to 3,189 contacts (this includes child protection related and other misconduct matters). With respect to child protection-related matters, these are categorised broadly by EPAC on its case management database as follows:

- **Enquiries** are those matters which do not reach the threshold of reportable conduct or other misconduct, many of which are referred back to principals to manage locally.
- **Local management** includes allegations of reportable conduct that are exempted from notification to the Ombudsman under the class or kind agreement, and where it is deemed appropriate (and the local manager agrees) to undertake the investigation locally.
- **Reportable conduct allegations** are notifiable to the Ombudsman under Part 3A of the Ombudsman Act and are investigated directly by EPAC.

Of the 3,189 matters handled by EPAC in the period, 554 involved students with disability (that is, students included in the NCCD) – representing 17% of all matters handled.

Of these 554 matters, 362 were deemed 'not reportable conduct' under Part 3A of the Ombudsman Act. Of the remaining matters, a further 104 were dealt with under the class or kind agreement and were not notified to our office.¹⁶⁴

In order to develop a suitable audit sample, we requested that EPAC provide us with one third of 'enquiry' matters involving children with a recorded disability in the period which were not notified to our office under Part 3A, and an additional random sample¹⁶⁵ of one quarter of matters classified as meeting the class or kind determination. Based on these parameters, a total of 147 matters were identified, comprising 121 enquiries and 26 'class or kind' matters.

EPAC provided us with the 'case note reports' for all 147 matters recorded on its database. The case note reports generally included:

- the reasons why the enquiry was deemed not reportable to the Ombudsman under Part 3A (having regard to the class or kind determination)
- EPAC's assessment of how the matter should be handled (the outcome of the action ultimately taken by the school is generally not recorded on EPAC's database if it did not maintain oversight of a locally managed matter or where it did not directly investigate the matter), and
- the rationale for EPAC's decision on whether the alleged conduct was reasonable where they maintained involvement in the oversight and/or investigation of the matter.

164. The data provided by EPAC relating to disability status differs slightly from Ombudsman notification data as this was the first year that new recording rules were introduced and data is being remediated.

165. We agreed that the random sample could be drawn from EPAC selecting every third enquiry matter and every fourth matter on its list of 'class or kind' matters handled in 2016.

Our criteria for assessing EPAC's handling of these matters focused on:

- whether any of the enquiries or matters categorised as 'enquiries' or 'class or kind' should have been notified to our office under Part 3A
- in relation to those matters that should have been notified to our office but were not, whether the handling appeared to otherwise be satisfactory, and if not, the reasons why, and
- whether all other matters appeared to have been handled satisfactorily by EPAC (bearing in mind that the substantive response to the matter where there was no ongoing EPAC oversight could only be assessed if we also reviewed the records held by the school).

Any matter that should have been notified to our office, but was not, was counted as 'unsatisfactory' in the data presented in the 'key findings' section below.

EPAC also provided us with a copy of the observations it made as a result of its own internal review of enquiries the directorate handled during 2016 (up to the end of August). A number of our findings and observations align with those of EPAC.

At the conclusion of our audit, we provided EPAC with a copy of our assessment of the matters we regarded as unsatisfactory and our rationale. The Executive Director, EPAC, confirmed that she agreed with our findings in each case. We also met with the Executive Director to explore options for strengthening the department's response to matters involving children with disability – which we discuss further in the next section.

Key findings from our audit

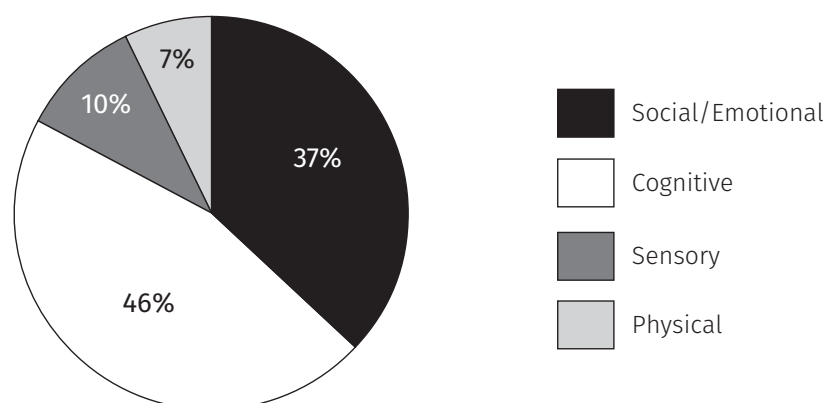
In presenting our findings, it is critical to note that the audit not only provided us with important insights into the role played by EPAC in directly handling and providing advice to schools on child protection related allegations, but it also highlights the significant volume of enquiries EPAC is handling from schools, which on the one hand presents a challenge, but on the other, an opportunity for identifying matters suitable for early resolution. However, as we discuss in the following sections, the current capacity of EPAC to continue to fulfil its combined investigative responsibilities and the role that schools need to play in resolving complaints, are issues which the department needs to review.

Our audit also provided valuable information about the types of allegations/complaint issues that are commonly raised in relation to students with disability, and the source of the concern which triggered EPAC's involvement.

The breakdown of disability type for each student

EPAC provided us with the disability category (based on the four NCCD categories) for the student involved in each matter included in our audit. The most common category was cognitive – making up 46% of all matters – followed by social and emotional at 37%.

Figure 2: Disability types



EPAC advised us that information about a student’s support needs should be provided by the school as early as possible to assist it to assess any risks for the student, and to determine appropriate action, including how best to support the student during the investigation process. Supporting documentation around individual learning plans, behaviour management plans and school-based behaviour policies are also sought by EPAC to inform its assessment of a matter.

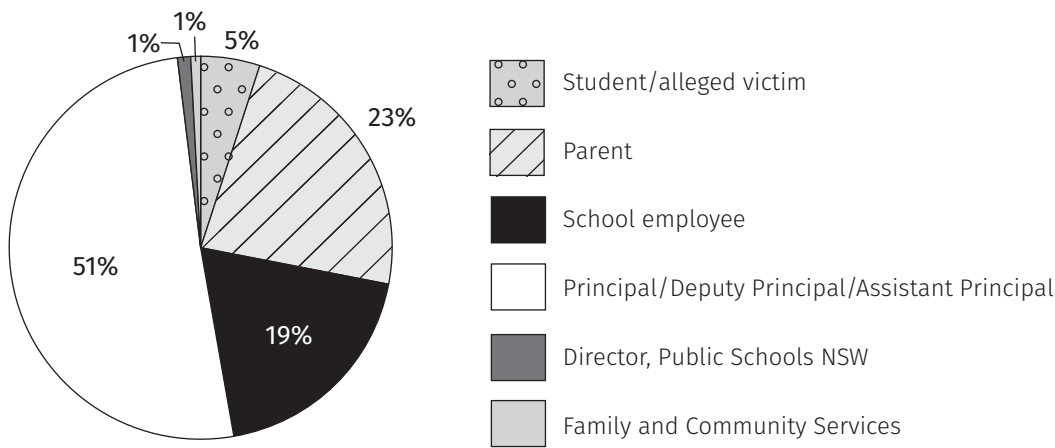
The source of complaints and allegations

As would be expected, the vast majority of contacts made with EPAC were as a result of reporting by school principals (and deputies/assistant principals). Contact was made directly with EPAC by parents/carers (or students) in only a small number of matters. However, as Figure 3 shows, in 28% of matters the source or trigger for contact being made by the school with EPAC was a student or their parents/carers raising concerns with the school initially.

A further 19% of matters were triggered by school employees reporting concerns to the principal or other school executive staff.

In around half of all matters, the principal/school executive staff generated the contact with EPAC.

Figure 3: Reporter type



The quality of EPAC assessment decisions

A total of 14 of the 147 matters (12 enquiries and two class or kind matters) included in the audit sample were determined to be unsatisfactory (10%) in relation to EPAC’s handling.

Of these 14 matters, we determined that nine were notifiable to our office but were not classified as such by EPAC.¹⁶⁶ This means that we disagreed with EPAC’s assessment as to whether a matter was notifiable in only 6% of matters in our audit sample.

Of these nine matters, we determined that eight appeared to have been handled satisfactorily by EPAC, apart from its failure to notify us.

Of the six matters that were determined to be unsatisfactorily handled by EPAC for reasons other than a failure to notify, a range of factors impacted the handling of each matter; however, the most common overriding themes were:

- insufficient information was collected by the investigator to properly assess and respond to the allegation, and
- certain allegations were categorised as ‘not reportable conduct’ when the more appropriate category was ‘ill-treatment’ – not notifiable under the class or kind determination – which would have prompted an investigation into the conduct, and allowed it to be examined more thoroughly by the department.

166. One of these matters came from the pool of matters categorised by EPAC as ‘class or kind’ and the remaining eight matters were from the pool of matters categorised as ‘enquiries’.

In light of the significant volume of matters being handled by EPAC, the results of our audit demonstrate that it is performing well in relation to identifying matters that should be notified to our office, and that it appears to be making sound decisions about which matters should be managed at the local level. However, as noted previously, in order to better understand the overall response an audit of school records would have also been necessary.

Enhancing guidance for EPAC staff on interpreting the ‘use of force that, in all of the circumstances, is trivial or negligible...’

We observed some inconsistent practice in relation to how allegations involving the use of physical force were being assessed by EPAC investigators. In our view, there were a number of matters that should have been classified as ‘reportable conduct falling within the class or kind determination’.

The practical impact of the assessment outcome is that if an allegation does not meet the threshold of ‘reportable conduct’, it is not reportable to the Ombudsman, and while it should still be appropriately responded to by the department, there is no requirement that it be ‘investigated’ (unlike allegations of ill-treatment that are assessed as falling within the class or kind determination).

Because the scope of our audit did not allow us to determine whether matters referred back to schools were ultimately well handled at the local level, we are unable to tell whether the EPAC classification of the matter had a negative impact on the overall handling and related outcome. Therefore, these types of matters were not included in the 14 ‘unsatisfactory’ matters we referred to earlier. However, EPAC has agreed with our recommendation that there would be value in providing further guidance and training on how this aspect of the definition of reportable conduct is being interpreted by its staff and related advice in relation to what might constitute ill-treatment or physical assault.

EPAC is in the process of updating its guide – *Responding to Allegations Against Employees in the Area of Child Protection* – and in our view, it would be useful for it to include advice to investigators on when allegations could reasonably be regarded as the ‘use of force that, in all of the circumstances, is trivial or negligible...’ and therefore not ‘reportable conduct’ and when they should instead be regarded as allegations of ill-treatment.

Improving the quality and consistency of assessment decisions

Our audit also identified the need for EPAC investigators to record the rationale for their decision-making more clearly and consistently. We identified a number of instances where the rationale for the assessment was not supported by the evidence or relevant legislation/determination. While the assessment decision did not necessarily affect the overall handling of the matter by EPAC, it is important that determinations relating to why a matter does or does not meet the reporting threshold to the Ombudsman, or the threshold for investigation by the department under the class or kind determination, are clearly understood and reflected in the case outcome.

Once again, our feedback on this issue was accepted by EPAC and will be incorporated into the guidance it plans to provide to its investigators as part of reporting on the results of this audit and the related internal review carried out by EPAC.

Removing the ill-treatment exemption from the class or kind determination

The number of ill-treatment allegations contained in our audit sample, together with our broader consultations and reviews, have shown that significant concerns exist in relation to the actual and/or potential ill-treatment of students with disability in schools, particularly in the absence of external oversight.

While our office has not exempted ill-treatment allegations from notification to our office by the non-government school sector, in light of the concerns which have been expressed about the need for *all* allegations of ill-treatment to be externally reviewed, we will be amending our class or kind determination with the department to bring *all* ill-treatment allegations under our direct oversight.

This amendment will provide an important safeguard for students with disability, as well as students more generally. However, we also note that requiring all ill-treatment allegations to be notified to our office does not, in and of itself, guarantee an effective response to the various types of ill-treatment cases.

How schools interpret ‘child protection related’ and associated reporting to EPAC

It is important to ensure that relevant matters involving students with disability – as well as other students – are being consistently reported to EPAC by schools.

The threshold for reporting to EPAC is that the allegation is 'child protection related'. We note that this does not *necessarily* guarantee that all reportable conduct allegations will be referred to EPAC by schools. By way of example, even with an amended class or kind determination which brings under our direct oversight all ill-treatment allegations, there is the potential for key school personnel to not consistently recognise improper restraint of a child as a form of 'ill-treatment'. Therefore, this highlights the need for appropriate training to be provided at the school level in relation to the various types of reportable conduct, including how to interpret the definition of ill-treatment, and clear instructions on when allegations of the use of force against students should (and should not) be regarded as 'trivial' or 'negligible'.

On a related note, for those matters that do not fall within the reportable conduct scheme but are still required to be notified to EPAC because they are 'child protection related', it is equally important for the department to provide clear guidance and related training.

A stronger resolution-focused approach

While it is critical that serious reportable conduct allegations are the subject of 'evidence-based investigative' action, this does not mean that these matters cannot *also* be partly addressed using sophisticated 'resolution-focused' strategies. This is particularly relevant to those matters where a parent or carer expresses concern about any aspect of a matter. In fact, research shows that when complainants believe that their concerns are being taken seriously and are being properly investigated, they are more likely to be open to broader discussions aimed at remedying the underlying cause of their concerns. Discussions in these circumstances can also assist agencies in strengthening their overall systems and practices.

Furthermore, a significant proportion of the non reportable conduct matters received by EPAC each year involve less serious child protection allegations, and are potentially capable of resolution at the school level. However, if they are not well handled early on, our review of cases has shown how quickly problems can escalate, and result in a fundamental breakdown in the relationship between the school and the involved parent/student.

We understand from recent advice from the department that EPAC will be allocated nine additional staff from 1 July 2017.¹⁶⁷ While this is welcome news, we understand that these resources will largely be directed towards enhancing EPAC's investigative capacity, given the high numbers of investigations being managed by current staff.

Later in this chapter, we again consider this issue of enhancing the department's resolution focused capacity.

9.3. Findings from the independent review we commissioned of complaints and reportable conduct allegations involving children with disability

As part of our broader inquiry into behaviour management in schools, we decided to conduct a review of the handling of complaints and reportable conduct allegations involving children with disability.

The need for a review was identified by the Community and Disability Services Commissioner in late 2015, following his examination of reportable conduct data which showed that a significant proportion of reportable conduct allegations involved students with disability. In noting this data, the Commissioner observed that there had not been a systemic examination of either our overall handling of these matters or the related practice issues.

Given that we were keen to obtain an independent perspective on our own practice in relation to matters involving students with disability, we engaged Mr Kieran Pehm – the former Health Care Complaints Commissioner and Deputy Commissioner, ICAC – to conduct the review.

167. Advice provided by the Executive Director, EPAC, 14 June 2017.

Scope of Mr Pehm's review

Mr Pehm's review involved an examination of 12 complaints handled by the Public Administration Division (PAD) of the Ombudsman's office about the department; a review of a schedule of a large number of reportable conduct matters from government and non-government schools; and an intensive review of 36 individual reportable conduct matters dealt with by the department.

Complaints

In relation to his review of complaints, Mr Pehm found that:

The review of complaints handled by PAD shows that they were well managed and were generally timely and responsive to the parties. There is an understandable focus on attempting to resolve the immediate issues giving rise to the complaints, rather than probe broader systemic and structural issues which are relevant and can be useful in resolving complaints. If the school is responsive, then the complaint can be amenable to resolution, although if the parties have become entrenched and the relevant principal refuses to participate there is no hope of resolution. Some examples as set out below are illustrative.

In one matter, the principal of the school refused to participate with the Ombudsman's office or accept the child back at the school. The Director, Public Schools, is absent from the papers so it is unclear whether there was any involvement by them. The most pressing issue was the placement of the student, which was resolved by a placement at another school being found. However, there is no documentation regarding the school's attempts to reasonably accommodate the child, its attempts to support his learning or its compliance with relevant policies.

In another matter, the complaint was about the 'autism manager' at a north coast primary school. The file note of a telephone call to the school shows the school agreeing that it 'should have [relevant] policies and procedures in place' regarding discipline and behaviour support for students, and that staff 'should comply with all relevant policies' when managing behaviour, including restraint. It appears from the file that the school did not have local policies and procedures in place but agreed to develop them with the complainant's input, which resolved the matter.

A similar matter followed the same pattern with the concluding letter saying that it believed the Ombudsman's inquiries caused training and policies to be revised and action to be taken which 'might not otherwise have occurred'.

These two matters suggest that the significant autonomy given to schools mean that it is largely a matter for the individual school whether they have local policies and support mechanisms to accommodate challenging behavioural issues. They also illustrate that a strong awareness of the department's relevant policies and guidelines can be a significantly persuasive factor in getting a school to reconsider its position.

I also note that the PAD has taken up a number of significant strategic issues through its own complaint handling and interaction with the Human Services Branch (HSB) of the office. For example, complaint files have raised the issue of the use of suspension and expulsion as a response to behavioural problems. A number of reportable conduct notifications and a complaint involving one school also raised important issues relating to the use of time-out rooms, lack of behaviour management planning and lack of response to self-harming behaviours. When these matters were finally investigated by the Employee Performance and Conduct Directorate (EPAC), the school produced four different policies of varying ages when asked for the school discipline policy, and had no behaviour management plans for students with challenging behaviours. The matter was finalised by referral to the relevant schools' Director to monitor the situation. In response to the broader issues raised in relation to the notifications, complaint and EPAC investigation, PAD made own motion inquiries to monitor the actions taken by the school to address the concerns.

This case is illustrative of the fact that a school can operate for a long period of time without having in place adequate local policies and frameworks.

Reportable conduct matters

In relation to his review of reportable conduct matters, Mr Pehm found that:

The overall quality of the EPAC investigations is very high and the Employment Related Child Protection Division's (ERCPD) analysis of the investigations is conscientious and thorough.

However, in terms of a specific issue about which the Community and Disability Services Commissioner has a keen interest, I note that there is a general failure of investigators to ascertain – or at least document – whether the applicable policies and guidelines of the department have been adequately implemented. For example, while a number of the cases include the alleged inappropriate use of restraint and various forms of time-out facilities, there is a repeated failure by the EPAC investigations to note the existence of the department's guidelines and whether there is a lack of compliance. In addition, in a number of these types of cases there was scope for the Ombudsman's ERCPD officer to require close consideration against specific guidelines.

From my review of these matters, it is also useful to examine the extent and variation of the use of 'time-out' procedures and facilities, as representative of the broader issues of behaviour management and discipline.

The variety of 'time-out' procedures and their use is substantial. They range from the 'detention chair' on the veranda, in view of the classroom; the 'side room'; 'the quiet space'; 'reflection room'; the 'thinking chairs'; the 'taking space area'; the 'courtyard'; the 'safe area' and the 'independent learning area'. The circumstances under which the various methods are used are largely undocumented.

The particular characteristics of the 'time-out' areas also vary enormously. Some are purpose built but mostly they appear to be disused rooms built for other purposes. In one case, the time-out room appeared to be an old school kitchen and one aspect of the allegation included the student wrapping an electric flex cord around their neck while detained there.

The variety of types of 'time-outs' used, the lack of local policies regarding its use and the recording of its use, make this issue perhaps the most acute example of behaviour management which ought to be exercised only within strict guidelines. For this reason, future oversight of reportable conduct matters, together with the Ombudsman's work with department more generally, need to examine this issue more thoroughly.

Broader issues relating to complaints and reportable conduct matters

Relevant to the issues considered both earlier and later in this chapter, Mr Pehm also made a number of observations about the need to encourage a stronger resolution focus in relation to complaints and reportable conduct allegations. He noted the following:

Many complaints and even certain reportable conduct allegations involving students with disability do not respond well to traditional investigation and determination of misconduct. They arise where trust between parents and schools is questioned, and the objective of the complaint process should be to restore trust wherever possible, as quickly as possible. The fair criticisms of the current complaint system, aired at the Parliamentary Inquiry, are that it is slow, cumbersome and does not meet parent expectations of having their child's educational position addressed.

What is needed to more effectively handle complaints about reasonable accommodation is an effective complaints resolution service. The essential features of such a service should be that it is responsive and accessible to both parents and principals; has expert mediation skills and access to expert advice across the broad range of disabilities and behavioural problems which exist.

9.4. Improving complaint handling systems and practices

The Complaint Handling Improvement Program (CHIP)

The department is involved in implementing a number of initiatives to improve its complaint handling practices and frameworks more generally which are relevant to the issues of concern identified through this inquiry relating to students with complex needs and challenging behaviour. In this regard, one of the department's most significant undertakings is its participation in the Complaint Handling Improvement Program (CHIP).

The CHIP is one of the four major initiatives under the Premier's Priority 12 – *Improving Government services*.¹⁶⁸ Priority 12 recognises the significance of effective complaint handling in improving customer satisfaction and driving continuous service improvement across the NSW Government.

The CHIP – a collaboration between the Department of Finance, Services and Industry (DFSI), the Ombudsman and the Customer Service Commissioner – was endorsed by the Secretaries Board in November 2015.¹⁶⁹ Since then, the program has been further developed by representatives from across each cluster of government through the CHIP Reference Group and in collaboration with the Customer Service Council.

168. There are 12 Premier's Priorities. See <https://www.nsw.gov.au/improving-nsw/premiers-priorities/>

169. DFSI has the lead in implementing Stage 2 of CHIP (Feedback Assist) while the Ombudsman is the lead agency for the CHIP Commitments.

The first stage of the CHIP involves cluster agencies adopting and implementing six commitments to effective complaint handling which lay the foundation upon which agencies can build their complaint management systems. They are:

1. Respectful Treatment
2. Information and Accessibility
3. Good Communication
4. Taking Ownership
5. Timeliness
6. Transparency

In response to the identified need by Government to improve complaint handling, in 2016 our office together with the office of the Customer Service Commissioner developed the document – *Whole-of-Government Commitments to Effective Complaint Handling* – which essentially provides a guarantee to the customer on what they can expect when they complain to a NSW Government agency about their processes, services and/or employees based on the six commitments.¹⁷⁰ The document makes clear that:¹⁷¹

Complying with the Commitments will require agencies to:

- *foster an organisational culture that values complaints*
- *have a complaints management system, including policies and procedures, that is consistent with best practice, fair and seen to be fair.*

An organisational culture that values complaints is reflected in the:

- *attitudes and decisions of senior management*
- *the policies and processes employed by the agency*
- *the resources provided to complaint handling training and staffing*
- *internal recording and reporting of complaint data, and*
- *publicly available information about complaint processes and outcomes.*

An organisational culture that values complaints does not see them as a mark against the organisation but as valuable feedback and an opportunity to improve services.

The Australian New Zealand Standard is recognised in both countries as the best practice standard in complaint management. The Standard provides guidance on “planning, design, operation, maintenance and improvement of the organization’s complaint management system.”¹⁷² Compliance with the Commitments will ensure that agencies’ complaint management systems are consistent with the Standard. Complaint management systems should be fit for purpose, having regard to the agency’s size, volume of complaints, functions and customer base. Due to differences between agencies, including the types of complaints they receive, it is not practical to set timeframes and other KPIs that would apply across all Clusters. Each agency is required to set its own KPIs, including timeframes for dealing with complaints, which should be published in the agency’s policy and procedures and made available to customers.

In July 2016, the Secretaries Board endorsed the implementation of the Commitments to Effective Complaint Handling (Stage One of the CHIP) in each Cluster by 31 December 2016. It was also agreed that, to ensure long-term sustainability and transparency in complying with the Commitments, an initial review of compliance would be conducted in July 2017, with a proposal to conduct annual reviews into the future. The first review will be undertaken by our office in consultation with the Premier’s Priority 12 Team.

170. NSW Ombudsman and Customer Service Commissioner (June 2016) *Whole-of-Government Commitments to Effective Complaint Handling*
171. *Ibid*, p3.

172. *Guidelines for complaint management in organizations* (AS/NZS 10002:2014), p5.

Stage Two of the CHIP involves the development of Feedback Assist, a consistent access point through which complaints, compliments, and feedback about government services can be lodged and directed to the appropriate agency. Recognising the complexity of government services, a central access point or Feedback Assist hub will be created on the NSW Government website where citizens can lodge a complaint, compliment or feedback about any agency.¹⁷³

Early this year, the CHIP Steering Committee (comprised of the NSW Customer Service Commissioner, Department of Finance, Services and Innovation, and the NSW Ombudsman) determined that the Ombudsman's office is best placed, and had the necessary expertise to perform, a central allocation and advice function for Feedback Assist.

The department's implementation of its Complaint Handling Improvement Plan (CHIP)

In our submission to the 2010 NSW Parliamentary Inquiry into the provision of education to students with disability or special needs, we emphasised the need for the department to have robust systems to monitor access to, and the delivery of, programs and supports for students with disability and special needs across the state. In this regard, we raised concerns about the lack of systems in place to record the numbers of complaints received across the department about particular issues, and noted that the absence of centralised collection of this information meant that:

- the department was unable to monitor the number of complaints made about the support provided to students with disability, and
- it was difficult for the department centrally, or even regionally, to identify systemic issues and share information about approaches that work well.

We have continued to monitor the department's progress in addressing the concerns we raised about complaint data capture, and while this issue has continued to remain a problem, as part of complying with the CHIP commitments, the department has more recently advised us that it is developing a complaint handling database in 2017/18, which is intended to provide a cluster-wide system for capturing and analysing complaint information generally. This database will also be a valuable tool for analysing trends in relation to specific cohorts of students, in particular, student with disability and additional support needs.

The department has also advised us that it plans to establish a dedicated, centralised complaints unit under the Executive Director, EPAC, to better align its investigative and complaint handling work. While the unit's resourcing and functions are still being determined, we understand that it will be relatively modest in size. Among other responsibilities, the unit will be required to establish the complaint handling database and play a lead role in ensuring the systematic collection, analysis and reporting of complaints data which will be critical to informing ongoing system and practice improvements.

The department has committed to conducting an analysis of and reporting on complaint data next year. In the interim, the department has indicated that it will prepare case studies on good complaint handling practice and how they have led to local improvements, as the ability to demonstrate systemic change will be limited until the complaint database is well established. In this regard, there would be value in the department identifying positive outcomes from matters involving students with disability to help promote better practice in this area.

In addition, this year the department developed and released a number of resources to support complaint handlers. They include:¹⁷⁴

- Revised policies and procedures
- Holding difficult conversations
- Complaint handling checklist
- Complaint handling flowchart

173. Each agency will be adding a 'widget' to its primary websites to facilitate people making complaints, compliments or giving ideas to the agency. The role of the Ombudsman's office will involve us managing a separate central access point for people who are unsure where to make their complaint.

174. Advice provided by the Department of Education to the Ombudsman, 28 October 2016.

- Toolkit for complaint handlers
- FAQs for school community and consumers
- Guidance on talking with and responding to complainants
- Guidance on managing unreasonable complainant conduct
- Case studies: what worked well and creative solutions

The department has committed to building on its existing professional development program by providing training to school leaders and staff on complaint handling, having difficult conversations, and providing feedback. In this regard, our office has been working in partnership with the South Australian Department for Education and Child Development's 'Education Complaints Unit' to develop a training package and resources for public officials focused on preventive and reactive strategies for managing and resolving breakdowns in relationships with stakeholders. While we intend for our work in this area to have wider application, we have started discussions with the department about the training program with a view to developing a tailored package for schools.

As well, the department has developed materials for 'customers' to make complaint handling more accessible, including fact sheets on 'How to make a complaint and what can I expect' and 'Making a complaint – roles and responsibilities' together with improved information on its website page. An analysis of the barriers for making complaints for particular cohorts of the community will also be undertaken over the coming year.¹⁷⁵

The department intends to develop an overarching complaint handling framework in 2017 based on the six commitments. By 2018, the department has committed to finalising the governance arrangements which will underpin the implementation of the framework and associated quality assurance processes to ensure the commitments are being met.¹⁷⁶

Frontline complaint handling and the need for early resolution

Against the background of these developments, it is important for our office to also highlight areas of the department's complaint handling systems and practice which require further strengthening.

Complaints to our office about the department – particularly those involving students with disability – consistently highlight the critical importance of the relationship between school staff and families/carers.

Common issues that feature in complaints involving students with disability and the department include:

- families not being included in discussions regarding management and support
- school staff not implementing documented support plans
- students being suspended for behaviour despite school staff not implementing documented support plans/strategies (or not having strategies)
- inadequate communication with families about the welfare and progress of their children (including not informing families in a timely way when their child is injured)
- school staff not taking adequate steps to obtain or seek additional support for the student
- inadequate action by the school to address safety and welfare concerns (such as following an injury or incident involving a student), and to communicate this information to the family
- suspension of a student from school despite the behaviour being associated with their disability and inadequate steps having been taken by school staff to identify and implement appropriate supports, and
- families not receiving an adequate response to their concerns.

175. Advice provided by the Department of Education to the Ombudsman, 28 October 2016.

176. Advice provided by the Department of Education to the Ombudsman, 28 October 2016.

Many of the matters that are raised with us by families and carers go to important issues relating to the adequacy and quality of the support provided to their child to engage in learning, and the ability of their child to access a quality education on the same basis as other students. As Mr Pehm also observed, we have found that with a high proportion of the complaints there has been a fundamental breakdown in communication, trust and respect between the involved schools and families. We have seen numerous matters where problems have escalated to a point where the issues in dispute become intractable, the relationships are fraught and adversarial, and legal action (on both sides) is taken or threatened. Importantly, many of the issues at the heart of these matters are relatively straightforward, and would have had a good chance of successful resolution if an effective resolution-focused approach had been adopted.

From our work in relation to these matters, we have identified a number of key factors:

- a lack of understanding of on the part of families as to what they can reasonably expect from the school and the department in terms of processes, information and communication, as well as in relation to specific supports for their children and parental input into decisions about their children
- a lack of knowledge about where to go and how to raise concerns and questions about the support being provided to the involved children; this tends to result in the heightening of concerns – for example, we note that many families are not aware that they can complain to their network’s Public Schools Director or Executive Director if they can’t resolve their concerns with the principal
- families being seen as a ‘problem’, or as unreasonable complainants, when they keep asking questions and challenging school decisions
- breakdown in the relationship between parents and the school caused by a perception that the school is being unfair or reasonable in its treatment of the child and/or the parents, and
- at times, schools have provided significant supports and taken substantial and appropriate action in response to concerns raised by families, but this has not been adequately communicated to the parents.

We note that there is considerable trauma in many of these matters for all of the parties, including the student with disability. In some cases, it does not appear that trauma that is being experienced by families is being adequately acknowledged or taken into account in the department’s response to concerns that the parents have raised. We also recognise the challenges for principals in effectively resolving many of the complaints that are, at least in part, about them and their decisions.

We support approaches to strengthen early and local resolution of complaint issues. However, in addition to local resolution, there is also a need in certain cases to strengthen complaint and resolution processes beyond the local school level, particularly in those circumstances where relationships at the local level have broken down. In this regard, we note that Directors Public Schools NSW, and Educational Services teams, also play an important role in relation to complaint handling.

For example, an important aspect of the role of Directors is providing strategic leadership and support to principals in managing complex operational and educational/school-based issues. When complainants are not satisfied with the conduct or outcome of their complaint, Directors Public Schools NSW can review the handling of, or outcomes resulting from, a complaint.

In addition, Educational Services teams can provide support to Directors to respond to formal complaints, meet with complainants, and review processes and documentation to help facilitate successful complaint outcomes.¹⁷⁷ Educational Services can also play a role in providing support to schools in negotiating and conciliating complaints made by parents to schools, particularly where complex issues are involved.

177. Department of Education statement of information to NSW Ombudsman, 20 March 2017.

Alternative dispute resolution options

From a significant number of matters that we have reviewed, we have noted that the matters were not effectively dealt with at either the local school or Director levels.

For example, we have reviewed a number of complaints which include an allegation of failure to provide a student with disability with 'reasonable adjustment', that were not resolved by the department and went down the pathway of a complaint to the AHRC. And then, after the dispute remained unresolved in the Commission, the case resulted in Federal Court proceedings.

Meanwhile, the issues which need to be addressed for the involved child can remain on the 'sidelines' for many months. This whole process often leads to an irretrievable breakdown in the relationship between the parents and the school. Furthermore, the trauma caused to the child, their parents, and school staff, is patent and clearly not in the public interest. From our experience, it is clear that many of these matters should have the input of specialist dispute resolution skills at the earliest opportunity – the following case studies illustrate this need.

Case Study 6.

The parent of a student with autism and anxiety complained to us that the local school was not providing appropriate support. The student had been suspended on multiple occasions, and the parent complained that the school had not provided adequate support to the student, and had not taken his disability into account when considering disciplinary action. The parent also complained about the principal's manner in responding to the concerns, including reportedly threatening to restrict the parent's access to the school under the *Inclosed Lands Protection Act 1901*.

We conciliated the complaint, noting the conflict and poor communication between the school and the parent, the impact on the student's education and anxiety, and the need to re-establish and improve the long-term relationship between the department and the family. As the relationship between the principal and parent had irretrievably broken down, the conciliation focused on how best to support the student in an alternative public school in the area.

As a result of the issues identified in this complaint, the department conducted a review of what had been happening at the school over the previous four years in relation to students with high support needs (including the student in this complaint), and made recommendations to the school. The review included consultation with the parent who made the complaint to us.

Case Study 7.

We received a complaint from the parent of a student with autism about a public school's management of the behaviour of students in the Autism Unit, including the use of restraint. Among other things, the parent raised concerns about the resources allocated to the unit for staff training and safe time-out areas for students who need it. The parent also complained that the school had not provided a reasonable response to their concerns.

Following our inquiries with senior staff in the department, a meeting was held between the parent and a number of school and departmental personnel to discuss the concerns and to develop an action plan for resolution. The agreed plan included actions to conduct a comprehensive review and develop recommendations to foster an inclusive education culture at the school; deliver autism specific training to staff; improve communication with families regarding incidents; and deliver whole-of-school professional learning on the management and resolution of critical incidents.

Case Study 8.

A parent made a complaint to us that a support unit in a public school had failed to prevent an assault on their young daughter by other students, had not informed the parent of the incident in a timely way, was providing inadequate support to students with disability, and had poor communication with families. The parent was concerned that they had not been told what action had been taken in response to the incident to prevent recurrence, and did not know how their child would be supported to return to school. The parent told us they were considering legal action against the department.

Following the complaint, department staff met with the parent to discuss support for the child in a different school, in accordance with the parent's wishes. The Director, Public Schools NSW, worked closely with the principal and assistant principal at the previous school to address the issues raised by the parent and others regarding support and communication. After holding meetings with parents of students in the support unit, the Director set up regular morning teas with parents to improve communication. We monitored the actions of the department in assessing and managing risks to students following the incident.

Case Study 9.

A complaint we received from a disability advocate about the failure of the department to resolve issues affecting the enrolment of two young boys with autism and additional support needs is still unresolved. The boys had been out of school for seven months when the complaint was brought to our office, following a suspension of one child and action taken by the parents to remove both children from the school. Subsequent developments in this matter include:

- disagreement between the department and the parents as to whether the boys were eligible for enrolment in an SSP
- a complaint by the parents to the AHRC on the grounds of disability discrimination
- an assessment, initiated by our office with FACS, of the eligibility of the children for access to the NDIS, and the disability-related supports needed at school
- service of a notice on the parents to appear in the Children's Court in relation to the children's continued absence from school
- adjournment of the court proceedings to enable a roundtable meeting to be convened by our office with all parties, and
- the roundtable meeting not going ahead for the reason that the relevant Director in the department preferred to let the Children's Court determine the matter.

Case Study 10.

The parents of a young boy with autism raised concerns that the acting principal of their local school had written to them to advise that their son could not return to the school until his personal care-related issues were addressed. The family told us that there had been no discussion with them before they received the letter, and no concerns had been raised by the previous principal.

By the time the concerns were raised with us, a complaint had already been made to the AHRC and was in the process of going before the Federal Court. The young child had been out of school for over six months. We noted that a range of escalating actions had followed on from the initial point of the letter to the family, including (among other things):

- the involvement of a range of external agencies for the purpose of obtaining assessments and opinions on the situation
- communication between the family and the department progressively limited to correspondence between an advocate and lawyers, and

- correspondence from the department indicating intended court action against the parents due to the child not being in school.

A psychologist recorded that the family had experienced significant emotional stress as a result of the events, and the relationship between the school and the family had been irreparably damaged. The family subsequently enrolled the child in a non-government school.

These case studies illustrate what can go wrong when disputes are not resolved effectively. They also illustrate the scope for sensitive, child-focused and commonsense solutions for disputes which will inevitably arise. In our view, the department's system for resolving concerns needs to have a much stronger emphasis on creative problem-solving that is focused on repairing and maintaining the relationship between the student, family, and school.

Strengthening the overall system for effective complaint management

As part of our ongoing complaint oversight and related training program, we aim to keep abreast of developments in complaint practice in other jurisdictions. Of particular relevance to this inquiry are the developments that have taken place in the South Australian public school sector over recent years, which provide a strong example of an agency seeking to wrestle with the challenge of building and delivering an effective complaint management and related dispute resolution system. In the context of the department's commitment to establish a centralised complaints unit, the lessons from the South Australian experience are particularly apposite.

South Australia's Education Complaints Unit – a case study

The South Australian Department for Education and Child Development's Parents Complaints Unit (PCU) was established in March 2012¹⁷⁸ in response to both the 2011 Cossey Report into bullying and violence in schools, and findings by the South Australian Ombudsman in an earlier 2010 report. The PCU was the forerunner to the current centralised complaints unit in the department – the Education Complaints Unit (ECU).

At the time of its inception, the PCU constituted the third level of the complaint process, the second being the offices of regional directors. In 2014, regional directors became education directors and their former function in the complaints process was removed.

In late 2014, the SA Ombudsman finalised an audit of state government complaint management systems. As a result, the state government issued a circular requiring all agencies to have in place a complaint management system that conformed to the Australian standard for complaints management. The SA Department of Education developed and released a new policy and set of procedures in August the following year. The new policy and procedure established the ECU as the second level in complaint resolution in the department, the third level being constituted by relevant statutory authorities (including the Ombudsman), subject to a right of internal review overseen by head of the department.¹⁷⁹

In 2016, the SA Ombudsman conducted an audit of the department's complaint handling at school sites and centrally at the ECU. The Ombudsman made the following findings:

- That the department had no agency-wide complaint handling policy and procedures.
- That the lack of an overarching complaint handling policy and procedures for the department was, to a large extent, contributing to unplanned and inconsistent practice across education sites, failures by certain schools to report matters to the ECU, inadequate training, inconsistent policies across schools, and no trained contact person for complaints in most schools.

178. https://www.premier.sa.gov.au/images/news_releases/12_03Mar/parent_complaint_unit.pdf

179. Ombudsman SA (Nov 2016) *An audit of the Department of Education and Child Development's education related complaint handling practices*.

- That the advent of the ECU ‘...appears to have caused some school sites, if not a majority, to rely heavily on the second level of complaint handling, rather than applying resolution skills at first or subsequent point of contact, which the Australian Standard recognises as being the optimum or best practice.’¹⁸⁰

The report concluded that the ECU, as the second level of complaint handling, had been effective in managing complaints, but cautioned that ‘unless level one practices are substantially improved, it will be unable to perform the complete role and suite of responsibilities which the policy and procedure allocates to its function’.

The Ombudsman’s audit report recognised that steps were being taken by the department to implement its policy and procedures, and that change would be incremental. However, the department had already achieved some success in promoting to its school community the right to complain, and noted that the ECU reported a 100% increase in complaints from 2013 to 2014 due to ‘publicity and service promotion in the school community’.¹⁸¹

Although refinements to practices are ongoing, structurally the South Australian model reflects best practice in complaint handling and dispute resolution. In particular, consistent with best practice, the model embeds the three levels of complaint handling as recognised in the 2014 *Australian/New Zealand Standard – Guidelines for complaint management in organizations* and as reflected in our *Complaint Management Framework*, which we developed to assist agencies to implement an effective complaint management system that is compliant with the Standard:¹⁸²

- Level 1: Frontline complaint handling and early resolution of complaints.
- Level 2: Internal review of complaints and/or complaint handling (may include further investigation of issues raised and use of Alternative Dispute Resolution options).
- Level 3: External review of complaints and/or complaint handling by organisations.¹⁸³

From our perspective, we will be keen to monitor the extent to which the department continues to strengthen its complaint handling systems into the future based around the ‘three levels’. We understand from that the Department that in scoping the role of its new complaints unit, it has consulted widely with other education providers across the country.

9.5. Complaints about non-government schools

Complaints about non-government schools can be made directly to the school, and to the school’s relevant governance structure (such as the Board, Diocese). External avenues of complaint handling in relation to non-government schools comprise NESA (where there is clear evidence that options for pursuing the complaint at the school have been pursued without resolution or that there is a compelling reason that this would not be appropriate, and where the complaint relates to compliance with the requirements of the Education Act)¹⁸⁴ and the AHRC (where the complaint relates to discrimination).¹⁸⁵ However, unless it is a complaint relating to a reportable conduct matter, complaints about non-government schools cannot be made to the Ombudsman.

Non-government schools can obtain support and guidance in relation to complaint handling from their governance structure, and some representative bodies, but it is variable. For example:

- AISNSW provides guidance regarding the handling and resolution of complaints by schools. The AISNSW has advised that, in the event of a complaint being made to the AHRC, it supports schools throughout the process, including compiling documentation and support during the mediation process.

180. Ibid, p1 (Executive summary).

181. Ibid, p24.

182. NSW Ombudsman (June 2015) *Complaint Handling Framework*. See, for example, sections 2.5 of the Framework and 4.8 of the Model Policy.

183. Standards Australia/Standards New Zealand, *Australian/New Zealand Standard – Guidelines for complaint management in organizations*, AS/NZS 10002:2014. Published 29 October 2014.

184. NSW Education Standards Authority, <https://educationstandards.nsw.edu.au/wps/portal/nesa/regulation/cricos-label/raising-concerns>. In relation to complaints it handles, NESA has advised that only lines of inquiry relating to compliance are pursued. NESA does not provide an external review of complaints, and does not investigate matters that are at the discretion of the school’s proprietor, criminal matters, or matters that are for other government agencies.

185. Australian Human Rights Commission, <https://www.humanrights.gov.au/complaint-information>.

- CSA has advised that it engages an independent conflict resolution provider with a Christian ethos to provide assistance where needed. CSA has engaged the provider to develop a comprehensive training package for staff in relation to restorative practices.
- Some of the Catholic Education Offices have individuals with conflict management skills who can provide advice and support. Guidance can also be obtained from the Catholic Education Commission; the Commission has advised that, in relation to complaints, they tend to be contacted after a matter has escalated and the relationship between the school and the family has been adversely affected, which makes it more difficult to resolve the issues.

Our review of the policy, procedure or other guidance in selected non-government schools in relation to complaints identified that most (but not all) have guidance that is in line with registration requirements. In this regard, we note that:

- Eighty-eight per cent have policies and procedures in relation to complaints or grievances, and
- three-quarters (74%) make specific reference to processes for raising and responding to matters of concern identified by students and/or parents.

Overall, we noted a number of areas where guidance in non-government schools in relation to complaints could be strengthened, in line with best practice in complaint handling – including providing clear information about options for review, and emphasising and outlining clear processes for early resolution of complaints.

We found that three-quarters (72%) provide guidance about where, how and when a complaint can be made. Less than half (45%) provide guidance in relation to the options for review (internal and external).

In relation to the approach to complaints, 60% identify the importance of early intervention and resolution. Just over half (59%) identify the systems that are in place to minimise the possibility of complaints escalating into ongoing disputes.

The guidance provided by two-thirds (67%) of the schools frame complaints and complainants in a positive way, including that they:

- indicate that feedback and complaints are encouraged (with no detriment)
- indicate that complainants will be treated with respect, and
- provide guidance about the behaviour that is expected of staff and complainants.

Not many of the schools (17%) provide guidance about managing the conduct of complainants who act unreasonably.

There is a range of good practice guidance that non-government schools can draw on to enhance their complaint handling policies, processes and practice.

9.6. Strengthening the Ombudsman’s complaint handling and reportable conduct functions

Against the background of the issues raised in this inquiry, and Mr Pehm’s review of our handling of complaint and reportable conduct matters, we have considered our own practice in relation to matters involving students with disability.

In relation to our oversight of reportable conduct matters, we note Mr Pehm’s positive feedback about both our office’s analysis of complaints and reportable conduct matters. In our assessment, the relatively low sustained rate involving students with disability, together with the lack of documented analysis of the conduct against relevant policies and procedures, are likely to be due to a number of factors, including that:

- the quality or absence of behaviour plans relating to the involved students
- the sometimes limited skill set of the involved staff in the context of the challenging behaviour support which they can be required to provide, and

- the generalised nature of the policy guidance provided

means that even when the conduct of the involved staff member is inappropriate, there is often not a compelling basis for a *misconduct* finding via the reportable conduct scheme.

In making these observations, we are nevertheless committed to strengthening our oversight of reportable conduct matters involving students with disability. As identified earlier, we will amend our class or kind determination with the department to bring *all* ill-treatment allegations under our direct oversight. The reportable conduct division of the office will also task particular staff with the responsibility for enhancing our oversight of these matters and for strengthening our work on related systems and policies.

However, while we will have the capacity to deal with the increased number of reportable conduct matters that result from the removal of the ill-treatment exemption, our capacity to deal with general complaints about the department, including those involving students with disability, is severely restricted by our limited resources. In fact, over the past three years, 46% of all general education complaints involving students with disability were declined at the outset (compared to 57% for all education complaints).

Our work on various complaints during this inquiry which have involved students with disability has shown that, while this work is often resource intensive, it can be very fruitful in identifying important issues affecting both individuals and the functioning of the system more broadly.

Our work over the period of this inquiry has also highlighted the need for our office to handle education complaints and reportable conduct matters relating to students with disability in a more integrated fashion.

In terms of the broader operating framework for complaints in the future, Mr Pehm also noted that:

In my opinion, in addition to the department enhancing its capacity to effectively resolve matters, there is also a need for an independent external agency to play a greater role in relation to certain disputes which arise between parents and schools. Issues relating to the supports provided to children with disability in school settings are a good example of an area where an independent body will often be needed to breakdown entrenched positions between the involved parties. While the referral of these types of matters to an external body to resolve should not be the default position, it is naive to believe that whatever action the department takes in enhancing its resolution capacity, will avoid the need for external agency involvement with a strong and expert resolution focus.

The Community Services (Complaints Reviews and Monitoring) Act 1993 (CS CRAMA) provides a statutory framework for the resolution of complaints regarding community service providers and a similar model could support a resolution service for complaints in the education sphere. While section 13A of the Ombudsman Act provides for a conciliation function, the Ombudsman Act does not have the same strong emphasis as CS CRAMA on resolution and promoting the rights of service receivers.

We believe that Mr Pehm's observations are apposite to consider not only in relation to complaints about the department, but also complaints relating to the non-government schools sector. In relation to complaints about non-government schools, external avenues for investigation and/or resolution are restricted to issues relating to compliance with the Education Act (NESA) or discrimination (AHRC). Given the breadth of matters about which a complaint could be made in relation to schools, there would be merit in strengthening the external avenues by which families/carers and other relevant parties can seek to raise and resolve issues affecting students in these schools.

In addition, while complaints about the department can be made to the Ombudsman's office, there is a need to strengthen the arrangements in which the department – and, as we have noted, perhaps schools more generally – proactively identify matters for independent external investigation and/or resolution. More broadly, we agree with Mr Pehm's assessment that there is a need to encourage a stronger resolution focus in relation to complaints and reportable conduct allegations, particularly given the significant impact on all parties, including students with disability.

We would appreciate consideration of these matters by the Parliamentary Committee conducting the inquiry into the provision of education to students with a disability or special needs in schools in NSW.



PART 3

Proposals for reform

Chapter 10. Proposals for reform

Against the background of the issues discussed in the previous chapter, and broader issues highlighted by this inquiry, we propose the following:

10.1. Department of Education

Students with complex needs and challenging behaviour

1. The department should systematically identify the students in public schools who require intensive individualised interventions relating to complex needs and challenging behaviour – including through examining school data relating to, inter alia, multiple suspensions; part day exemptions; non-attendance; teacher-directed use of time-out rooms/spaces; incident reports; and the use of restrictive practices.

The department should develop a practice framework for how it will maintain ‘line of sight’ and track practice, progress, and outcomes in relation to these students, including mechanisms for identifying those who require escalation to a case management team and/or a networked specialist centre.

As part of the framework, the department should identify the data it needs to capture for these students to enable reporting in an aggregated way. The framework and data should be subject to initial and ongoing external scrutiny.

2. Public schools should examine the adequacy of their processes for systematically identifying students ‘at risk’, including students with complex needs and challenging behaviour, and facilitating caring and supportive relationships between staff and those students. Examples provided during the inquiry have included the appointment of key staff as mentors.

Positive Behaviour for Learning

3. As part of its provision of increased support for the implementation of the Positive Behaviour for Learning framework (PBL) in public schools, the department should:
 - a) proactively target schools which are implementing PBL to see what assistance and clarification is required regarding their implementation of the framework, particularly in relation to students who require targeted and individualised interventions, and
 - b) determine and implement strategies for effectively promoting and communicating good practice in PBL across schools, to improve the schools’ understanding of how to implement the essential elements of the framework.

Functional behaviour assessments

4. In relation to functional behaviour assessments, the department should:
 - a) review the adequacy of the guidance that it provides to schools regarding functional behaviour assessments, including ensuring that there is clarity as to when a functional behaviour assessment needs to be undertaken (including when adverse action in response to behaviour is being proposed or taken)
 - b) assist schools to identify individuals with the expertise to undertake functional behaviour assessment, and
 - c) review the adequacy of the guidance regarding the use of functional behaviour assessments that is provided in the department’s professional learning courses.

Access to expertise

5. The department should track and analyse the requests from public schools for support from Educational Services teams to identify any anomalies in these requests across NSW (such as very high or very low use). This information should be considered, together with other data relating to what average request numbers should be, having regard to the characteristics of the school community.
6. The department should ensure that information and resources resulting from the projects undertaken as part of the 'Special schools as centres of expertise' initiative are publicly available and easily accessible.
7. In relation to schools accessing appropriate expertise in relation to students with complex needs and challenging behaviours, the department should develop a carefully planned and ongoing strategy for:
 - a) identifying those staff in schools who have particular expertise, and:
 - i) making this information available to schools via a central source
 - ii) making best use of their skills across the school system
 - b) systematically identifying potential leaders to work in this area and providing them with opportunities to be mentored by the department's most highly skilled specialist teachers (and to be provided with other relevant professional learning experiences), so that, over time, the numbers of teachers with the expertise required is significantly expanded, and
 - c) identifying the additional professional learning that may be required by staff who currently work in the specialist/advisory roles (such as the learning and support teachers and assistant principals, and the learning and wellbeing staff in the Educational Services teams) – including targeted training in conducting functional behaviour assessments and developing evidence-based strategies, and 'coalface' experience in working with the most highly skilled specialist teachers. (The additional school counsellor and senior psychologist positions may also provide an opportunity to boost the skills of the other specialist/advisory roles).
8. The department should set mandatory professional learning requirements for principals, including training on the Disability Standards for Education. The department should also consider whether the mandatory professional learning requirements should apply to the school executive group more broadly.
9. The department should set mandatory professional learning requirements for the key specialist/advisory roles, such as the learning and support teachers and assistant principals, and the learning and wellbeing staff in the Educational Services teams.
10. The department should provide advice to the Ombudsman's office regarding any current or intended actions that may address the issues that have been raised regarding the turnover of staff in the Educational Services teams.
11. The department should look at ways to promote information among principals regarding ways in which funding provided to schools through the Resource Allocation Model (RAM) is being (or could be) used to meet the learning and support needs of students with complex needs and challenging behaviour.

Responding to behaviours of concern

12. In relation to requests for part day exemption for reasons associated with behaviour, the department should:
 - a) build in a requirement that, before a request is recommended or approved, Educational Services must assess whether all steps have been taken to maintain the student in school on a full-time basis, including implementing personalised learning and support (with actions to obtain and implement expert advice), and whether other intervention is needed

- b) ensure that adequate systems are in place to:
 - i) identify and escalate matters in which there are repeated requests for part day exemption, resulting in the student being out of full-time education for extended periods of time
 - ii) enable analysis of relevant data to identify trends and potential areas for proactive attention.
13. In relation to requests for distance education relating to students with additional learning and support needs, the department should:
- a) include a requirement that the intervention strategies implemented at the school, and the assessed impact of the interventions, must have been informed by expert advice, before the request can be approved, and
 - b) ensure that adequate systems are in place to enable analysis of the data to identify trends and potential areas for proactive attention.
14. In relation to data on the suspension and expulsion of students in public schools, the department should:
- a) provide advice to the Ombudsman's office regarding whether, and how, it will analyse suspension information to ascertain the proportion that relate to behaviour associated with disability, and any related practice issues
 - b) (in addition to the data on suspensions and expulsions that it already reports) collect, analyse and report on data relating to the suspension and expulsion of students:
 - i) with disability or other additional needs
 - ii) in OOHC.
15. As part of the department's review of its *Student Discipline in Government Schools Policy*, it should review its current guidance in relation to the use of time-out strategies (including dedicated time-out rooms); the use of restrictive practices, including seclusion and physical restraint; and the use of suspensions – in consultation with stakeholders. The department should develop clear and comprehensive guidance that:
- a) strengthens the processes relating to actions that schools are required to take:
 - i) prior to adverse action being taken against a student in relation to their behaviour (except where there is a real and immediate risk to safety)
 - ii) following any instance of the use of physical restraint or seclusion
 - b) makes clear the department's position on the use of seclusion in schools
 - c) strengthens the recording and reporting requirements, and
 - d) strengthens the arrangements for monitoring practice.
16. Information in this report relating to 'Alternative settings' and 'School support for students in residential OOHC' identifies the need for a broader range of education options, particularly for those students with significant trauma, behaviour, and/or disengagement. Together with key partner agencies, the department should consider the information in this report and explore what more needs to be done to enable these children and young people to obtain an appropriate education. As part of this work, the department should institute a system for ongoing assessment of:
- the effectiveness of available models, and
 - whether there is sufficient supply of the required models to meet needs.

Governance

17. The department should look at how it/schools can best provide public reports on the use of the Integration Funding Support component of the funds provided to schools through the RAM regarding students with disability, to facilitate greater accountability and transparency on this issue.
18. In addition to the new arrangements for monitoring school practice and performance (including the AZT and School Excellence Framework), the department should:
 - a) examine, as part of the roll out of the Synergy data system across schools, the adequacy of the 'intelligence capacity' of the system, via the data which will be captured and analysed by senior management of the department. In this regard, it will be important to assess whether the system allows for analysis of trends, within and across schools and districts, in connection with significant issues raised in this report (including but not limited to adherence to key policies)
 - b) ensure that other sources of information, such as particular allegations against employees or significant concerns raised about a school, trigger a closer examination of school practice by Directors, Public Schools NSW, and
 - c) overlay the new arrangements for data collection and related monitoring of school practice and performance, with a thorough and rigorous auditing process that is well calibrated to risk – to ensure regular, independent reviews of practice, in line with a sophisticated risk management framework.

Interagency collaboration

19. Against the background of observations made in Chapter 7 on 'Interagency collaboration', the department should review its current interagency models – including *Connected Communities*, Networked Specialist Centres, and a range of other key initiatives – with a view to enhancing the governance, leadership, and outcomes to be achieved by these models.
20. In light of the success of its multiagency models being dependent on the strength of the overall partnership developed (including the operating framework and governance arrangements of these partnerships), both the department and other key agencies should institute a system for the ongoing review and analysis of relevant interagency work. Given the vital importance of this work and the critical need to identify and replicate interagency initiatives that are effective in both:
 - identifying children most in need of a multidisciplinary response (see proposals 1 and 2), and
 - delivering a tailored, multiagency response

it is critical that the response to this proposal is led by the heads of relevant agencies, and that they employ an action learning approach in identifying and then embedding sophisticated interagency initiatives across the state.

The Complaint Handling Improvement Project (CHIP) and related issues

21. The department should aim to be a leader in implementing the principles and practices relating to the CHIP.
22. As part of implementing the CHIP, the department should ensure that it develops and implements a well-designed complaints database, together with a robust practice framework for monitoring complaint trends and outcomes (including responding to local school based and broader systems issues which come to light from its monitoring of the data).
23. The department should, as part of developing the robust monitoring framework referred to in item 22, ensure that this work includes:
 - a strong focus on students with disability and additional support needs, and
 - the capture, analysis and response to relevant data pertaining to this cohort (for example, complaints about reasonable adjustments, suspensions, the inappropriate use of force, the use of restrictive practice, delays in functional assessments etc).

24. In addition to adopting the proposals referred to in items 22 and 23, the department should, to the extent to which it is practical, seek to align and integrate both its complaint and reportable conduct data capture and related monitoring initiatives.

Enhancing direct complaint handling and reportable conduct practices and systems

25. Regarding its complaint handling framework, the department should effectively implement 'the three tiered framework', recognised as best practice by the Australian/New Zealand Standard: *Guidelines for Complaint Management in Organizations* (AS/NZS 10002:2014).
26. Consistent with accepted principles of best practice for complaint handling, the Ombudsman's office supports the early and effective resolution of matters at the local school level. Such a focus can of course only be effective if local school leaders are adequately supported by the department, including through the provision of enhanced practice guidance and training, and clear advice as to the types of conduct or circumstances that require escalation within the department.

In relation to this issue, we note that a number of parties have expressed concern to us about whether at the school level, key personnel will consistently recognise improper or inappropriate treatment of a student; for example, improper restraint of a student. For this reason, guidelines regarding escalation procedures also need to be complemented by enhanced training guidelines regarding the treatment of students – including students with disability – insofar as behaviour management and support strategies are concerned.

27. From long experience, we have seen that the effective management of complaints within an organisation is only achieved where complaint handling responsibilities are clearly articulated and centrally coordinated. This will be particularly the case for a large public sector multi-site organisation such as the department. Therefore we support the department establishing an appropriately resourced centralised complaints unit to monitor, analyse, and respond to complaint trends.
28. In light of the findings of both the Pehm review and this inquiry, the department should focus on ways in which it can enhance its complaint and reportable conduct practices to better identify and track the use of restrictive practices; consistently examine complaints and reportable conduct matters relating to the use of these practices in the context of the national agenda aimed at reducing their use; and where restrictive practices are used, ensuring that their use is consistently and competently reviewed against 'best practice' policies and procedures.
29. As part of its work seeking to strengthen its complaint handling and reportable conduct systems and practices, the department needs to consider how it might generally enhance the understanding by parents/carers and students of its complaints and reportable conduct systems in a way that builds confidence in – and provides real access to – these systems.
30. As part of its review of its complaints and reportable conduct policy and practice frameworks, the department should also give careful consideration to how it might strengthen the quality of communication with parents/carers and children and enhance the levels of trust, particularly in relation to matters in which communication and trust has broken down or there is a high risk of this occurring.
31. As part of its work seeking to strengthen its complaint handling and reportable conduct systems and practices, the department also needs to substantially strengthen its dispute resolution capacity. In this regard, the department should consider establishing its own dedicated team – or teams – of Alternative Dispute Resolution (ADR) experts *and/or* a panel of independent ADR experts who it can engage in appropriate cases (including individuals with disability expertise).
32. As reflected in the three level model advocated in the Australian/New Zealand Standard: *Guidelines for Complaint Management in Organizations* (AS/NZS 10002:2014), the department's processes need to reflect that, in certain circumstances, an independent external agency will be the best option for effectively investigating and resolving particular matters. In this regard, the department needs to formulate its own policy and practice regarding those circumstances where it needs to proactively identify matters for independent external investigation *and/or* resolution.

33. For matters involving allegations of, or concerns about, the alleged abuse and neglect or ill-treatment of a child with communication challenges, there will often be heightened risks. For this reason, the department needs to review its policy and practice framework to specifically reflect that the risks in relation to these matters need to be carefully identified and adequately responded to (particularly insofar as the key management decisions that are made after the concerns have come to light).
34. The department should form a reference group, including key advocates, parent/carer representatives, and other stakeholders, to:
 - a) look at complaints work from a structural, systems perspective (not dealing with individual matters), and
 - b) inform the review of the interagency models (see recommendations 19 and 20 above).
35. In forming the reference group referred to above (34), the department should give consideration to whether it would be useful for the group to comprise all school sectors.

10.2. The non-government schools sector

36. In consultation with their member schools, each of the peak bodies representing the non-government schools sector should consider the relevance of, and their capacity to implement, the proposals for reform outlined above. In this regard, we note that particularly in connection with the proposals relating to:
 - relevant policy and practice enhancements
 - best practice in complaint handling and dispute resolution (in the context of the current limited independent complaint handling and oversight options available in relation to complaints about non-government schools)
 - professional development and training
 - data collection and analysis, and
 - interagency collaboration

there is scope for the non-government school sector to explore the relevant issues jointly with NESA and the department, for the purpose of reaching a shared agreement on best practice and policy for promoting consistency across the school sectors in these areas.
37. Following consideration of the proposals for reform, and after consultation with their member schools, each of the peak bodies should provide a report to the Minister for Education within 12 months of the finalisation of this report, outlining how they propose to improve their systems and practices.

10.3. Department of Family and Community Services

Data relating to students in OOHC

38. The Department of Family and Community Services should provide annual advice to the Ombudsman's office and the public regarding the progress of the work it is undertaking with the department and other school sectors to ensure that:
 - a) regular and accurate information is provided to schools regarding the students who are in OOHC, and
 - b) access to education, and the educational outcomes, for children and young people in OOHC are tracked and evaluated.

10.4. Department of Premier and Cabinet

Interagency collaboration

39. Given the importance of the interagency collaboration that is the subject of proposals 19 and 20, the Department of Premier and Cabinet should take the lead role of ensuring the successful ongoing implementation of these proposals.



NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: 02 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
National Relay Service: 133 677
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au