

**INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR  
SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS**

**SUPPLEMENTARY QUESTIONS**

**QUESTION 1**

How many allegations were there in each of the last three years of sexual abuse in NSW schools?

**ANSWER**

<b>All sexual abuse</b>	<b>Total</b>
<b>2014</b>	159
<b>2015</b>	159
<b>2016</b>	205

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 2**

How many allegations were there in each of the last three years of sexual abuse in NSW schools involving students with disabilities?

**ANSWER**

<b>Sexual abuse students with disability</b>	<b>Total</b>
<b>2014</b>	13
<b>2015</b>	15
<b>2016</b>	25*

*\*In 2016 the Employee Performance and Conduct Directorate changed its counting rules for identifying students with disability to conform to the Nationally Consistent Collection of Data on School Students with Disability. This change also involved forcing the question to be put to the Principal/reporter – which accounts at least in part for the increase in numbers of students identified in 2016.*

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 3**

How many allegations were there in each of the last three years of physical abuse in NSW schools?

**ANSWER**

<b>All physical abuse</b>	<b>Total</b>
<b>2014</b>	360
<b>2015</b>	266
<b>2016</b>	363

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 4**

How many allegations were there in each of the last three years of physical abuse in NSW schools involving students with disabilities?

**ANSWER**

<b>Physical abuse students with disability</b>	<b>Total</b>
<b>2014</b>	73
<b>2015</b>	46
<b>2016</b>	121*

*\*In 2016 the Employee Performance and Conduct Directorate changed its counting rules for identifying students with disability to conform to the Nationally Consistent Collection of Data on School Students with Disability. This change also involved forcing the question to be put to the Principal/reporter – which accounts at least in part for the increase in numbers of students identified in 2016.*

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 5**

How many allegations were there in each of the last three years of physical restraint in NSW schools?

**ANSWER**

<b>All physical restraint</b>	<b>Total</b>
<b>2014</b>	15
<b>2015</b>	13
<b>2016</b>	17

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## SUPPLEMENTARY QUESTIONS

### QUESTION 6

How many allegations were there in each of the last three years of physical restraint in NSW schools involving students with disabilities?

### ANSWER

<b>Physical restraint, students with disability</b>	<b>Total</b>
<b>2014</b>	9
<b>2015</b>	6
<b>2016</b>	14*

*\*In 2016 the Employee Performance and Conduct Directorate changed its counting rules for identifying students with disability to conform to the Nationally Consistent Collection of Data on School Students with Disability. This change also involved forcing the question to be put to the Principal/reporter – which accounts at least in part for the increase in numbers of students identified in 2016.*

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## SUPPLEMENTARY QUESTIONS

### QUESTION 7

How many reportable incidents were there in each of the last three years in NSW schools?

### ANSWER

<b>Reportable incidents</b>	<b>Reported to the Ombudsman</b>	<b>*Class or kind</b>	<b>Total</b>
<b>2014</b>	269	195	464
<b>2015</b>	226	256	482
<b>2016</b>	410	372	782

*\* Section 25C of the NSW Ombudsman Act (1974) permits the Ombudsman to determine that allegations of certain classes or kinds of conduct by employees of agencies are exempted from being reported to the Ombudsman. Regardless of this decision, the Department continues to be required to investigate the allegation, take appropriate action, keep adequate records and provide relevant information to the Ombudsman on a six monthly basis.*

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 8**

How many of these were subsequently reviewed by the NSW Ombudsman?

**ANSWER**

<b>*Reportable incidents reviewed by NSW Ombudsman</b>	
<b>2014</b>	262
<b>2015</b>	223
<b>2016</b>	391

*\*Matters about which the NSW Ombudsman has requested ongoing and/or final information.*



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**SUPPLEMENTARY QUESTIONS**

**QUESTION 9**

How many of these were then the subject of adverse findings?

**ANSWER**

The NSW Ombudsman provides feedback, seeks reviews and requests further investigative actions. The number of requests for review made by the NSW Ombudsman in the last three years is below.

<b>Ombudsman requests for further action/review</b>	
<b>2014</b>	7
<b>2015</b>	5
<b>2016</b>	11

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 10**

What is the threshold for considering an incident 'reportable' in NSW schools?

**ANSWER**

The Department of Education sets out the thresholds in the Reporting Allegations against Employees of a Child Protection Nature. This document refers to the thresholds in the *Ombudsman Act 1974* and can be found at <https://education.nsw.gov.au/policy-library/associated-documents/respondwoutdisc.pdf>.

The department also relies on information published by the NSW Ombudsman and the Office of the Children's Guardian as available at [www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection/defining-assault-for-the-purposes-of-the-reportable-conduct-scheme](http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection/defining-assault-for-the-purposes-of-the-reportable-conduct-scheme) and [www.kidsguardian.nsw.gov.au/ArticleDocuments/183/Reporting\\_certain\\_misconduct\\_involving\\_children\\_April2014.pdf.aspx?Embed=Y](http://www.kidsguardian.nsw.gov.au/ArticleDocuments/183/Reporting_certain_misconduct_involving_children_April2014.pdf.aspx?Embed=Y).

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## SUPPLEMENTARY QUESTIONS

### QUESTION 11

What are the obligations that apply to non-government schools in NSW under the Commonwealth *Disability Discrimination Act 1992*?

### ANSWER

The *Disability Discrimination Act 1992* (Cth) makes it unlawful for an 'educational authority' to discriminate against someone on the grounds of their disability, or the disability of their associate (being a spouse, relative, carer or certain other persons with whom the person has a disability, as defined). Section 4 of the *Disability Discrimination Act 1992* defines 'educational authority' as meaning a body or person administering an educational institution. An 'educational institution' is defined as meaning a school, college, university or other institution at which education or training is provided. Therefore, the *Disability Discrimination Act 1992* applies to NSW non-government schools.

In particular, section 22 of the *Disability Discrimination Act 1992*, makes it unlawful for an educational authority to refuse or fail to admit persons, or offer unfavourable terms or conditions of admission, or to deny or limit access to persons, by reason of their disability. Furthermore, subsection 22(2A) makes it unlawful for an education provider (being an educational authority, educational institution or organisation whose purpose is to develop curricula) to exclude persons from participation (including by developing or accrediting curricula with content that excludes the person from participation) on the grounds of disability.

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## SUPPLEMENTARY QUESTIONS

### QUESTION 12

What are the obligations that apply to non-government schools in NSW under the Commonwealth Disability standards for Education?

### ANSWER

The *Disability Standards for Education 2005 (Cth)* (the Standards) also apply to NSW non-government schools. The Standards address the rights of students with disabilities, or those students with associates who have a disability, and the legal obligations of education providers along with the measures that evidence compliance with those obligations, in respect of enrolment and participation, development, accreditation and delivery of curriculum, support of students and elimination of harassment and victimisation.

Underpinning the Standards are requirements that students and prospective students with a disability must be treated on the same basis as other students, and that education providers must make reasonable adjustments where necessary to achieve such treatment. Additionally, with respect to the standards for harassment and victimisation in particular, the education provider must develop and implement strategies and programs to prevent harassment or victimisation of students with a disability, or students with an associate who has a disability.

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## SUPPLEMENTARY QUESTIONS

### QUESTION 13

What are the obligations that apply to non-government schools in NSW under the *NSW Anti-Discrimination Act 1977*, if any?

### ANSWER

Section 49L of the *Anti-Discrimination Act 1977 (NSW)* makes it unlawful for an educational authority to discriminate against a student on the basis of their disability. However, section 49L does not apply to a 'private educational authority'. Section 4 of the *Anti-Discrimination Act 1977 (NSW)* defines a 'private educational authority' as a person or body administering a school, college, university or other institution at which education or training is provided, **not being**:

- (a) a school, college, university or other institution established under the Education Reform Act 1990 (by the Minister administering that Act), the Technical and Further Education Commission Act 1990 or an Act of incorporation of a university, or
- (b) an agricultural college administered by the Minister for Agriculture.

Section 49L does not relieve NSW non-government schools of the obligation to comply with the Commonwealth *Disability Discrimination Act 1992* and the Standards, which have overlapping and to some extent more onerous obligations than the *Anti-Discrimination Act 1977 (NSW)*.

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 14**

How many schools run, participate in or support the provision of the Arrowsmith Program?

**ANSWER**

The department does not hold this information centrally.

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 15**

How many students participate in the Arrowsmith Program?

**ANSWER**

The department does not hold this information centrally.

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**SUPPLEMENTARY QUESTIONS**

**QUESTION 16**

What steps have been taken by the NSW Department of Education to assess the effectiveness of the Arrowsmith Program?

**ANSWER**

The Department of Education does not endorse individual providers or their programs. The department has not identified any peer-reviewed research of the Arrowsmith Program.



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**SUPPLEMENTARY QUESTIONS**

**QUESTION 17**

What advice has been provided by the NSW Department of Education to schools regarding the Arrowsmith Program?

**ANSWER**

The Department of Education has provided advice about this program upon request from schools. In summary, this advice is that there is at present no conclusive evidence to support the use of the Arrowsmith Program. The department has not identified any peer-reviewed research of the Arrowsmith Program.