

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 59)

How many vacancies are there, as of today, at schools with special purposes?

ANSWER

The formula for establishing classes in Schools for Specific Purposes (SSPs or special schools) recognises the additional needs of students and is based upon a factor of need for each student which informs class sizes.

In classes for students with a moderate or severe intellectual disability and multi-categorical classes, a student with a severe intellectual disability is counted as 1.666; a student with autism or emotional disturbance as 1.428; a student with a physical disability as 1.25; and a student with moderate intellectual disability as 1.111.

Vacancies in SSPs have been determined based upon the number of students with the factor of need that is appropriate for each class type.

As at 23 June 2017, there were 533 vacancies in SSPs across NSW. A breakdown by operational directorate is provided in the table below.

Vacancies by the department's operational directorate as at 23 June 2017

Operational Directorate	Vacancies
Macquarie Park	173
Tamworth	51
Ultimo	229
Wagga Wagga	80
Total	533

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

QUESTIONS ON NOTICE

QUESTION (transcript page 59)

Can you give us a rough idea of which regions of the State that 600 [vacancies in SSPs as at 27 March 2017] might be in? Are there some obvious places where they are?

Could you give us a regional breakdown of where those areas are?

ANSWER

As at 27 March 2017 there were 651 vacancies in SSPs across NSW.

The majority of these vacancies were in SSPs in the Sydney metropolitan area including parts of Western, South Western and Northern Sydney.

Vacancies by the department's operational directorate as at 27 March 2017

Operational Directorate	Vacancies
Macquarie Park	206
Tamworth	64
Ultimo	265
Wagga Wagga	116
Total	651

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

QUESTIONS ON NOTICE

QUESTION (transcript page 60)

It is very clear to us, in the evidence we got, that there were substantial capacity issues. A better measure, if you like, for the unmet need would not be 600 vacant places but would be how many children have been assessed as being in need of one of these school positions but a position has not been available. Do you have the data?

Or how long they have waited for a position to be available?

ANSWER

The numbers of students being considered for specialist support class at each local placement panel at any given time changes regularly and the data is not available at a state level.

There is no average 'wait time' for students seeking placement in a specialist support class. The placement panel process is ongoing and subject to the changing availability of specialist support class places in proximity to the student's home school and any other concurrent requests for specialist services.

Further information about the planning and placement process for students with disability is available in the Government's submission to the Inquiry as well as provided in response to questions on notice arising from previous inquiry hearings.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 64)

The Auditor General says one in four [children with disability are denied enrolment in their local school]. Is there any evidence that the department has that suggests that might not be the case?

ANSWER

As part of the performance audit “Supporting Students with Disability in NSW Public Schools”, the Audit Office of NSW undertook a survey of parents and stakeholders. The survey was about “experiences with disability in the education system”. The survey was not randomised; it invited responses from interested parents and stakeholders including those reached via organisations consulted by the Audit Office.

The Audit Office survey received 300 submissions. Of these, 75 responses, or one in four, responded that they had been told by staff there was no place for their child at their local school. While this is a concerning statistic, it is not clear from the survey results whether the schools from which parents reported that they children were allegedly denied enrolment related to government or non-government schools, whether the incident was resolved enabling enrolment in the local school where this was the desired outcome of the parent, or whether survey responses include experiences in other education jurisdictions. Therefore, the department is not able to confirm from this survey whether or not it is the case that one in four students has been ‘denied enrolment’ in their local public school due to disability.

The Audit Office of NSW made thirteen recommendations, all of which were accepted by the department. The report did not make any findings or recommendations in relation to this specific issue. The overarching conclusion of the performance audit was as follows:

Given the diverse needs of students with disability, the Department is doing a reasonable job in managing how well they transition to a new school and in supporting teachers to improve these students’ educational outcomes. However, while some schools support students with disability well, others have more to do before they adequately meet students’ needs.

As noted in responses to questions on notice from previous inquiry hearings, the Department is participating in a project to implement a whole-of-government complaint handling program. This will provide a central point (in addition to, and linking with, existing agency systems), to lodge, track and manage complaints. It will improve the department’s capacity to collect data, including data related to people with disability

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 64)

What is being done to make sure that the expectation [that children have a right to be enrolled in their local school] becomes a reality?

ANSWER

As part of the performance audit “Supporting Students with Disability in NSW Public Schools” the Audit Office of NSW recommended that the Public Schools website information be improved to support families to understand their enrolment options.

Since that time, the department’s website has been improved, informed by consultation with stakeholders including parents and school staff, to include more information on enrolment. Information about enrolment and support options for students with disability starts with enrolment in regular classes and schools. The website also includes links to professional learning for school staff and information for parents about rights and obligations in relation to enrolment under the Disability Standards for Education. Work is continuing to improve the information provided on individual school websites.

In addition, there has been high participation in the Disability Standards for Education training by all staff across the public school system, as outlined elsewhere through this inquiry, and participation continues to increase. This training includes a specific component that deals with the Standards for enrolment provided in the Disability Standards for Education 2005 and the rights of students with disability to seek enrolment on the same basis as students without disability and related obligations of schools.

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

QUESTIONS ON NOTICE

QUESTION (transcript page 65)

But there are two aspects to this: there is the funding and the resourcing, and I appreciate your answer on that, and there is also the legal discrimination requirements, if one set of kids is getting careers advice, food tech and sport, and kids with disabilities in the schools are not being funded to have those experiences, is that not a breach of our disability discrimination requirements? How do we possibly meet the Act? Isn't that just discrimination?

ANSWER

The department agrees that disability discrimination occurs where an individual has been denied or limited access to a benefit because of his/her disability.

However, the department notes that not all programs and courses are offered at every school in NSW. For all students, principals and teachers will make decisions about which areas are most appropriate for their student cohort in light of their professional judgement of the students' education needs and interests. The fact that different schools have different combinations of offerings is not, of itself, a denial of a benefit to some students. It may be evidence that all schools seek to tailor their programs to the needs of their students.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 66)

It really goes to this: Are we treating these kids equally? Are they getting equal careers advice, food tech, music and art? Do they have the same opportunities? I accept these are very different environments but I do think there is a fundamental legal question about the way we set up—

ANSWER

As indicated in the response to the previous question, not all programs and courses are offered at every school in NSW. Principals and teachers make decisions about which areas are most appropriate for their student cohort in light of their professional education judgement of the students' education needs and interests. Opportunities for students to engage in areas such as food technology, music and art can be provided through a range of tailored learning activities that are consistent with curriculum requirements. In addition to careers advisors and teachers, eligible students have access to specialist support teachers with expertise in planning for transition from secondary school for students with disability, including subject or course choices at school and planning for post-school education and training opportunities.

Broadly speaking, disability discrimination law inherently approaches the problem by recognising admitted differences and requiring institutions to take steps to assist the relevant persons with the disabilities to have 'substantive equality'.

In this way disability discrimination law is different from laws for discrimination on the basis of other protected attributes like race or sex (which require equal treatment). Disability discrimination laws require positive steps to be taken (by the institution) to assist the person with the disability to participate in the institutions or to enjoy access to the benefits. However, such an approach does not guarantee access to all benefits. The provision of benefits is subject to a number of broad considerations and decisions taken by the department which flow down to local educational offices and then to schools.

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

QUESTIONS ON NOTICE

QUESTION (transcript page 67)

Can I ask you to take on notice whether the department has sought or is willing to seek legal advice about disability discrimination?

ANSWER

The department is aware of its legal obligations under disability discrimination law. The department's Legal Services Directorate provides legal advice to schools and departmental staff on discrimination law. The department has also sought external legal advice on disability discrimination from time to time and will continue to do so as issues arise.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 68)

While we are on the speech pathology, the association made a strong pitch – seemingly evidence based – that the Queensland model has speech pathologists within the department with a regional remit. They are immediately available to schools. They suggest it is a far preferable model than the New South Wales system. Have you looked at that and are you willing to look at the Queensland system?

ANSWER

Each school's learning and support team is well placed to plan how school resources are used to meet the needs of students and in supporting teachers to personalise learning and support for students with specific learning needs. A range of evidence-based strategies and tools may be used to support students experiencing difficulty with speech and language according to their individual needs. Schools may also work with speech pathologists in developing a personalised approach for students needing additional support in speech and language.

The department also notes that the evidence base supporting speech pathologists' contribution to student learning, including their direct employment in education systems, is complex. This evidence base includes but is not limited to data on learning performance.

The department is willing to look at approaches to the provision of speech pathology supports for students, and their evidence base, in other educational jurisdictions including Queensland.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 69)

Please provide the documentary aspect on notice. A description of alterations to the policy would be most appreciated. I appreciate the department's efforts to simplify forms of contact.

What happens after a complaint in is lodged?

I am asking specifically about employee performance issues. Under your policy – new or old – does a parent have the right to be interviewed on employee performance assessment?

ANSWER

The department's complaints policy and School Community and Consumer Complaints Procedure launched in January 2017 and forms a part of the NSW whole-of-government Complaint Handling Improvement Program. The policy and procedure are publicly available and can be located at: education.nsw.gov.au/policy-library/policies/complaints-handling-policy. Information about making complaints is available at: www.dec.nsw.gov.au/about-us/how-we-operate/how-we-handle-complaints/schools.

The procedure is based on the NSW Ombudsman's model complaint handling policy and is consistent with the Australian New Zealand Guidelines for Complaint Management in Organisations (AS/NZS 10002:2014) and the NSW Commitments to Effective Complaints Handling endorsed by the NSW Secretaries' Board in July 2016.

The new procedures simplify and streamline the processes for handling complaints and strongly support a focus on resolution of the complaints issues, rather than adherence to a process. It provides a three tier approach to complaint handling and review. The third tier of review is to an external agency, such as the NSW Ombudsman.

The procedure is supported by a Complaint Managers Toolkit which provides guidance and resources to complaints managers on a range of issues connected with complaint handling. The Department is currently planning and developing Toolkit elements in relation to supporting and responding to complaints from parents and carers of students with disability. The Department expects to add these elements to the Toolkit by the end of the 2017 school year.

From October 2017, Education will be introducing the whole-of-government complaints widget Feedback Assist to its corporate website. Feedback Assist is a whole-of-government tool for consumers to make complaints, compliments and suggestions.

The department has committed to establishing a central complaints unit whose function will be to resource and build capacity in complaints managers, and to collect, analyse and report on complaints data to inform improvements in complaint handling and broader systems issues.

Allegations of misconduct, including allegations of reportable conduct are not and have never been dealt with under the Department's complaint handling processes. Any allegations of misconduct or reportable conduct must be immediately reported to the Employee Performance and Conduct directorate.

Under the 2011 policy guidelines, both staff and consumer complaints were managed in accordance with three specific processes. While there was a focus on resolution, complaints managers tended to focus strongly on adherence to the correct process, rather than on working with the complainant to achieve a resolution. The guidelines gave no specific guidance in relation to the three tier process for review. The 2011 guidelines were lengthy and some complaints managers found them challenging to navigate.

There is now a separate set of procedures for external complainants that advises them how to make a complaint, explains how a complaint may be handled and what to do if they are not happy about the outcome of a complaints resolution process.

What happens after a complaint of possible misconduct by a staff member is lodged?

Departmental staff have an obligation to make an immediate report of allegations of misconduct to the Employee Performance and Conduct Directorate (EPAC). EPAC provides a daily inquiry service. EPAC officers obtain all the relevant information and submit the information to a senior officer who decides whether:

- The alleged conduct is reportable under Part 3A of the NSW Ombudsman Act and the terms of the 2010 Class or Kind Determination made by the NSW Ombudsman.
- The alleged conduct may constitute misconduct.
- How the matter should be dealt with.

If the alleged conduct is reportable it is usually formally investigated by EPAC.

If the alleged conduct is exempted from reporting to the NSW Ombudsman under the 2010 Class or Kind Determination EPAC may formally investigate the matter or may refer the matter to the school to manage a local investigation, with guidance and support from EPAC. A senior EPAC officer reviews the outcome of these matters.

If the alleged conduct is not reportable but there is evidence that it may constitute misconduct, EPAC formally investigates the allegations (e.g. conflict of interest, inappropriate use of Departmental resources, inappropriate conduct towards a colleague).

If the alleged conduct does not reach the threshold for reportable conduct or misconduct, EPAC refers the matter back to the Principal to deal with as a management issue, and provides the Principal with some support and/or advice to do so.

All decisions about the manner of handling matters are fully documented and recorded in the EPAC database.

Does a parent have a right to be interviewed on employee performance assessment (clarified that this question concerns allegations of misconduct)?

EPAC will always seek to formally interview any person (including parents/carers) who may be able to provide probative evidence.

Any parent/carer who expresses a wish to provide information to EPAC may do so, in whatever form they prefer.

EPAC always seeks the consent of parents and carers when interviewing children/students. If a student aged 16 or over expressly requests EPAC not advise their parent or carer, EPAC will give consideration to that request, taking into account the student's wishes and their reasons for the request.

EPAC undertakes to provide regular general information about the progress of an investigation to parents and carers. However, in order to protect the integrity of the investigative process, that information may be quite general.

S25GA, Part 3A of the *Ombudsman Act 1974* sets out the type of information the Department may disclose to children, parents and carers. EPAC seeks to follow the Ombudsman's guidance in relation to this issue, however, in employment settings and specifically in schools there needs to be a balance achieved in terms of sharing sometimes sensitive information. EPAC actively seeks the Ombudsman's assistance on some specific matters in relation to this issue.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 72)

Why there appears to be a lower rate of child sexual abuse involving students with special needs than the general population in the statistics provided by the Employee Performance and Conduct Directorate? The reason that there is a higher incidence of abuse and mistreatment sexual or otherwise, of children with a disability except for in the statistics provided by the Department.

ANSWER

In 2016, EPAC received 205 allegations of sexual abuse in NSW schools. 12% (25) of these allegations involved students with disability.

The department recognises the additional vulnerabilities experienced by students with disability but does not consider that the perceived lower rate of reports of sexual abuse allegations involving students with disability to be significant. This rate may be explained by the robustness of the department's policies and procedures in place to protect the welfare and safety of students, and the reduced opportunity for situational and opportunistic sexual abuse available in an educational setting as a result of the structure of the schooling system and the additional supports provided to many students with disability resulting in the presence of more than one adult.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

Question (Transcript page 75)

Ms Bale: I think that is something that we can take on notice in general about the reports that parents might need to provide for their child, if there is an access request requirement, because one of the key roles of our school counselling workforce is also around assessments. It might be better for us to actually articulate the types of assessments that are required, and how they might be provided might be helpful for you as well.

ANSWER

School counselling staff carry out cognitive, social, emotional and behavioural assessment of students referred by the school learning and support team, report the results of assessments and interventions to parents and teachers, and collaborate to improve learning and wellbeing outcomes.

A formal disability diagnosis or specialist paediatric assessment report is not required for students with disability who have low level additional learning needs who are supported through the resources allocated to every NSW public school. A diagnosis or specialist report is required for students seeking access to more intensive, targeted specialist support programs and services, as outlined in the department's disability criteria.

Under these criteria, school counsellors and psychologists can provide cognitive assessments for access request requirements for students with intellectual disability. Other assessments are required by appropriate professionals external to the school according to the nature of the disability or impairment, including a specialist medical practitioner or registered psychologist with appropriate clinical experience in relation to autism or mental health disorders.

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

QUESTIONS ON NOTICE

QUESTION (transcript page 76)

Does the Reading Recovery program work?

Mark Scott: - I am happy to provide you with the work that has been done by our Centre for Education Statistics and Evaluation (CESE) on Reading Recovery. It has some passionate defenders in our schools. The CESE report suggests that its benefits are not universally applied to all children who experience it. There is a question about how sustainable some of these benefits are over time. We are continuing to look at Reading Recovery and our support for Reading Recovery. That is work that is ongoing. Part of the opportunity around Local Schools, Local Decisions is to allow local principals to exercise their professional judgement on programs that are working well for these students and in their community and for us to provide advice around that. I can get you that research.

What is the annual cost?

ANSWER

The 2016-2017 annual budget was \$54.08 million. This includes 500 full-time equivalent teaching positions.

INQUIRY INTO THE EDUCATION OF STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN GOVERNMENT AND NON-GOVERNMENT SCHOOLS IN NEW SOUTH WALES

QUESTIONS ON NOTICE

QUESTION (transcript page 76)

Information regarding how the department's Centre for Education Statistics and Evaluation can provide information to schools about what works and what lifts outcomes, including to a level of granularity around different programs and different interventions for students with learning difficulties.

ANSWER

The Centre for Education Statistics and Evaluation (CESE) was created in 2012 to improve the effectiveness, efficiency and accountability of education in New South Wales. CESE is focused on supporting decision-making in education delivery and development with strong evidence.

CESE's three main responsibilities are to:

- to provide data analysis, information and evaluation that improve effectiveness, efficiency and accountability of education programs and strategies
- collect essential education data and provide a one-stop shop for information - a single access point to education data that has appropriate safeguards to protect data confidentiality and integrity
- build capacity across the whole education sector so that everyone can make better use of data and evidence.

CESE provides sound evidence for educators to make decisions about best practice in particular contexts; and importantly to enable teachers to meet the needs of students at every stage of their learning. CESE is delivering professional development for educators and leaders, building skills in evaluating strategies and programs, and in using data in decision making.

CESE analyses and evaluates educational programs and strategies. CESE gauges New South Wales' education performance over time through its ongoing core data collections, and delivery of analysis and reports. CESE is evaluating major programs across the education spectrum, from early childhood to higher education.

CESE's data collection and analysis work is critical for the allocation of funding according to need. CESE manages major data collections that underpin national and state funding distributions as well as major program evaluations. In particular, the Nationally Consistent Collection of Data on Students with Disability provides information on students' type of disability and the level of adjustment provided to meet their needs.

CESE developed and annually calculates the Family Occupational and Education Index used to allocate the NSW education budget among government schools. CESE measures how much schools contribute to growth in student performance. These 'value-add' scores are used to determine which schools are provided with extra support to improve student literacy and numeracy.

CESE's work informs changes in policy and program implementation. For example, the report on how schools can improve literacy and numeracy performance has informed the department's Early Action for Success strategy, which aims to improve outcomes through early intervention.

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

QUESTIONS ON NOTICE

QUESTION (transcript page 80)

Question about including Auslan in the State curriculum in the same way as French or Japanese.

ANSWER

In NSW, all students undertake 100 hours of mandatory Language study. Schools determine, often in consultation with their community, the language/s that will be offered. The decision is also influenced by the interest of students and the resources available, including the expertise of teaching staff.

When determining the development of a new syllabus or course the NSW Education Standards Authority (NESA) considers whether there is sufficient ongoing demand for the course and whether there are enough qualified teachers available. Currently, schools in NSW are able to deliver Auslan through a school developed Board Endorsed Course (SDBEC) in Years 7–10 and Years 11–12. SDBEC courses are designed to be taught within the same number of hours as Board developed courses. Specifically, 100 hours in Stage 4, 100 or 200 hours in Stage 5 and 120 or 240 hours in Stage 6. A SDBEC does not contribute to an ATAR, but the course is recognised on a student's Higher School Certificate testamur.

The Australian Curriculum, Assessment and Reporting Authority (ACARA) has developed an Australian curriculum for Auslan. NSW is currently continuing a review of the provision of Kindergarten to Year 10 Languages, including options for introducing new Language courses for study in NSW schools. This review involves consideration of Australian curriculum developed languages courses, including Auslan, that are not currently offered through NSW syllabuses.