

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

Name: Name suppressed (PC)

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Partially
Confidential

Inquiry into Students with disability or special needs in New South Wales schools

Submission

Name:
Date: 09/01/17

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INTRODUCTION

I am an Education Academic, as well as having previously being a teacher for over two decades.

I am a researcher in Education, as well as an advocate and Home School Teacher/Parent.

We have an 8-year-old child with complex disability needs, of a neurological nature: Severe Dyspraxia and Autism. He has informed us that he suffered abuse when he was **between the ages of 3 and 5** whilst under the care of Department of Education and Communities (DEC) NSW at . Between February 2012 and September 2013. The two staff members in were and . There were additionally several supply teachers of whom we have concerns over. We observed abuse of another child at the unit as well as our own.

We also have deep concerns as to the NSW Department of Education's investigative processes and accountability of their Employee Performance and Conduct Directorate (EPAC). We now home school our child, as we do not believe he is safe in the NSW Department of Education (formerly the NSWDEC) public school system. Our other son successfully attends public school.

LIST OF OBSERVED AND SUSPECTED INCIDENTS

- Caging and isolation of children in a blackened out cupboard
- Facial and head injuries to a child
- Unexplained bruising of multiple children (described as similar to that of an adult hand)
- Multiple physical assaults by teachers to disabled
- Physical assault by a teacher's aide, upon a disabled child
- Pinning down and forced fingernail cutting of a non-verbal child despite staff being notified of child's fear of nail cutting by others
- Allowing male members of the public to access non-verbal, pre-school, disabled children in a locked and bolted room, without recording their presence in the school (eventually admitted by Dept. of Ed)
- Forcing a disabled child, through using violence to try to force him to eat, who gags on food due to disability, despite staff having notification from multiple medical reports (chewing, swallowing, sensory issues – danger of asphyxiation)
- Teacher refusing to stop known bullying, stating a non-verbal, mute, disabled child needs to speak up to stop said known bullying; stating this was Dept. of Ed. policy
- Unexplained absence of a disabled 3yr old child, unsupervised, from a school area, found wandering outside by several members of the public
- Denial/removal of all communication tools to a disabled child prior to suspected multiple abuses
- Non-locking gates (a legal requirement)
- Concern of potential sex abuse of children, at the unit
- Verbal child distraught, threatened to tell parent of behaviour of teacher/teacher's aide. Child never returned to unit

Throughout his attendance we received no formal report of his progress despite our keen interest.

Minister Piccoli, and the NSWDoE state there is insufficient evidence that abuse took place, despite continuing to refuse to investigate said incidents. The multiple staff involved are still in place, running the unit, in charge of disabled pre-school children – many of whom are non-verbal.

COMPLAINT PROCESS

1. We wrote a formal complaint to the DEC Complaints Department with the above information, dated 1st October 2013. Our complaints were reportable offences.

'Responding to Allegations against Employees in the Area of Child Protection' p.11. Assault against a young person: Physical assault is only reportable where it includes all of the following elements:

- a. It is an act committed on or towards a child; and*
- b. It involves either the application of force to a child or an act that causes a child to think that immediate force will be used on them; and*
- c. It is either hostile or reckless (a reckless act is one where a person would reasonably foresee the likelihood of inflicting injury or fear and ignores the risk); and a child fears that he or she will be harmed as a result of the act, though the harm does not need to actually happen.*

2. EPAC chose to classify our complaint as minor and so not reportable. Initially they did consider investigating and suspected the bruising was caused by toileting at the unit (even although our son was and still is incontinent. EPAC staff members were informed that ECEG does not have mandatory reporting requirements in an email stating there will be no investigation. We were not informed of this. However the correspondence fails to note that under the Children and Young Persons (Care and Protection) Act 1998 if there is a risk of significant harm then it is reportable. EPAC chose to note that physical bruising, assault of another child by an adult; child found wandering unsupervised in open access area were not amounting to a risk of significant harm. **We have email copies through freedom of information** ¹.

3. The Principal of the School inquired into the matter and sent us a letter with a brief note stating that no action would be taken.

'Overall, it was not possible to clearly establish the cause of the bruising to AV's arm. Therefore the Directorate will not take any further action.'

4. However we have uncovered email evidence² from Freedom of Information that he lists the cause as 'physical prompts'³ 'when he is lifted on and off the toilet'⁴ despite our son being incontinent⁵ and his nappy rarely being changed at the school.
5. In the same letter we were offered a placement in a special school for our child.
 contacted us soon after our complaint was lodged with the NSW DEC asking us if we still wanted a placement, as she was aware we had made a complaint. We were left with the impression that we had to choose between a school placement or our complaint. To receive a placement we would need to drop our allegations and statement of observations of abuse and neglect.
6. Other child parents were also, we believe, encouraged to accept offered placement when they complained. They withdrew their complaint and allegations of similar bruising to their non-verbal child, stating to us directly that they didn't want to jeopardise this placement.
7. stated 'verbally' that our case could only ever be considered by the DEC as "hearsay" and we were instructed to drop it and also contacted at home via telephone on multiple occasions and we were instructed not to discuss these issues with other parents or we would be investigated. reiterated this in regards to our request for a reinvestigation.
8. EPAC signed off on the complaint and breached DEC policy as no parental witnesses (including ourselves) had been interviewed. This is potentially a direct breach of their own policies.

¹ Email 1 – see appendix

² Email 2 – see appendix

³ Email 3 – see appendix

⁴ Email 2 – see appendix

⁵ Report 1 – see appendix

RE-INVESTIGATION

1. On the advice of the Ombudsman NSW we asked the DEC to re-investigate our complaint. initial response was to state that we were now under investigation for not educating our child, as he is now home schooled, rather than look into our allegations. We were therefore threatened.
2. The DEC/EPAC have refused to do investigate
3. of EPAC stated there was no need for an initial investigation, and will not change that decision.
4. No explanation of any detail was offered into the process of the investigation, nor any explanation for the multiple breaches of health and safety and eyewitness abuse observed.
5. after looking at our complaints, on behalf of Frank Potter recognised that staff family members had accessed the unit and they will review the school procedures. She also requested that as the Dept. of Ed had admitted to one of the allegations, would we now just drop all the other allegations?
6. They dispute that he was restrained when his fingernails were cut. The Teacher's Aide according to , could not recall any incident regarding our child's nails or pinning him down with a supply teacher to cut his nails. After interviewed the supply teacher (when we provided her with information that she was a witness) could then suddenly recall our child's nails as being long, but then denied cutting them. refused to allow us to see her notes/transcript with the supply teacher; despite her suggesting that those staff with allegations were apparently given copies of our transcripts. We were unable to respond to, refute or challenge any potential false statements that they may have made.
7. They dispute that they isolated/restrained or removed food but at the same time agreed he was made to sit and eat food in a room isolated from the other children (even although this was contrary to all medical advice they received). did not have awareness of the medical advice during her inquiries even although there is email evidence of it being received and public health therapists (ADHC) on two occasions (2012) visited the unit to explain disability needs surrounding food and physical motor deficits directly to and
8. stated in writing to the *Senate Inquiry into violence, abuse and neglect against people with disability* that there were no other complaints from other parents despite and another parent stating that there had been.
9. The Sydney Morning Herald was informed by the DEC Media Unit, via EPAC, that the parents directly involved were interviewed and so was the child⁶(also reported by NBN television). When we questioned this part of their inquiry, they had no awareness that our son was non-verbal or that we had never been interviewed. They then stated another family and child was interviewed. We again asked which non-verbal child was interviewed. They had no awareness that all other children at the unit, during that time were non-verbal. They were unable to offer an answer, and have yet to respond.
10. [The Department claimed in early 2015 that as they had failed to initially do a full investigation, that its too late now as staff can't recall anything.](#)

⁶ Screenshot 1 – see appendix

ON GOING INVESTIGATIVE PROCEDURES.

1. Since October 2015 we have been asking the DEC the following questions.

Why does the DEC state disabled children in intervention services fall outside legislation and allegations of child abuse are not 'reportable' and no investigation is therefore required?

Why are staff, who are being investigated by police for allegations of multiple suspected child abuse offences, still in place and in charge of pre-school disabled children?

Why are multiple cases of alleged abuse of children across NSW deemed non reportable?

2. In response the DEC broke their own policy multiple times in failing to acknowledge receipt of said correspondence.
3. When we did eventually receive a response from Mr. Piccoli's office on 27th January 2016, there were multiple inaccuracies, stating there was an investigation, that there was only one staff member complained about and there was no direct response to our actual questions. Mr. Piccoli refused to meet with our elected Member of Parliament (Jodie Harrison MP) to discuss the above issues.
4. On the 16th February, Mr. Peter Riordan made further response. He questioned many aspects of our complaint which we demonstrated through DEC and EPAC's own evidence that they were false. He still failed to answer any questions about what legislation applied to the Unit for child protection, 4 months after our initial request to Mr. Piccoli and Mr. Riordan.
5. It was only on September 9th 2016 that Mr. Riordan confirmed that

'In relation to your query about the policy and legislation that may apply to your matter of 2013, I can advise you that with respect to the child protection concerns regarding treatment of your son, the applicable legislation and policies are part 3A of the Ombudsman Act 1974, the Children and Young Persons (Care and Protection) Act 1998 and the Department's Responding to Allegations Against Employees in the Area of Child Protection 2010.'

6. On 30th September 2016, _____ of the DEC stated

'I am advised that the Early Intervention Unit does not fall within the scope of the National Law and even if it did and even if a teaching staff member is required, that teaching staff member does not have to be an early childhood teacher.'

again failed to follow DEC procedure to respond to our queries asking if the *Disability Discrimination Act 1992* applies for Early Intervention Units in NSW run by the NSWDEC.

7. On the 28th October he did confirm that such legislation does apply.
8. It was only on the 3rd November 2016 (after 1 year) was an explanation offered as to why observed and suspected physical assault and abuse of children is reportable conduct.

I advise that a number of matters dealt with under LM do constitute reportable conduct. However, for such matters, under a class or kind agreement with the Ombudsman (in accordance with Section 25CA of the Ombudsman Act 1974), the Department is exempt from making a report. In these circumstances, the Department is still required to take appropriate action and keep records of that action.'

9. Section 25CA of the Ombudsman Act 1974 states

a. 25CA Ombudsman may exempt conduct from reporting

(1) The Ombudsman may exempt any class or kind of conduct of employees of

an agency from being reportable conduct.

(2) The Ombudsman is to notify the agency concerned of any such exemption.

http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/s25ca.html

b. "conduct" means:

(a) any action or inaction relating to a matter of administration, and

(b) any alleged action or inaction relating to a matter of administration.

http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/s5.html#conduct

The Department of Education therefore suggests that it considers dragging a non-verbal, pre-school child with potential physical/co-ordination/communication challenges, across a playground, pushing them to the ground and then twisting their arm; as an 'administrative conduct' matter.

It also suggests that the Department of Education considers the suspected physical bruising of multiple, non-verbal, pre-school children by Education staff employees is merely an administrative conduct matter.

In addition the Department is suggesting that a child going missing, allegations of forcing a non-verbal child who was on a specialist diet, to eat foods despite gagging, choking and vomiting issues caused by a disability which could result in death by asphyxiation; and allegations of forcibly cutting a non-verbal child's fingernails without consent are simply administrative conduct issues

10. EPAC and the Department have treated these matters by stating them to be Local Management issues and non-reportable.
11. In 2013 the staff and the department denied facial injuries, stating to have no incident/accident reports. The staff and DoE only admitted approx. two/three years later that the child did in fact have facial injuries only after we informed them of the witness who was a physiotherapist for the department of health who visited the premises to discuss the unexplained facial and head injuries.
12. The Department of Education claim to state that they have no incident/accident reports for our child being absent in their care and being found by members of the public. To date those witnesses have never been interviewed.

CHALLENGES WITH THE SYSTEM

1. The DEC fails to respond to complaints on many occasions, nor in a timely manner.
2. It appears to 'cherry pick the laws and policies to apply.
3. The department appears more interested in protecting the department than children from abuse.
4. Department members respond with generalisations rather than specifics to questions asked.
5. Parents are not given a voice in procedures.
6. The Ombudsman appears to have a 'close' relationship with the office thus lacking potential impartiality.
7. The Department investigates itself.
8. Principals 'inquire' or investigate allegations of abuse at their own schools leading to a potential conflict of interest.
9. The Department appears to be unable to answer basic legal questions after 3 years.
10. The Minister appears unwilling to meet with fellow elected representatives of the public (other MPs) let alone respond to the public whose office he serves – leading to lack of accountability.
11. There is no independent investigative body
12. Families and victims are allegedly threatened by the most senior executives if the Dept. of Ed., directly and indirectly, through employers, other government services.

The dept. and the accused appear to contradict themselves and continually change prior statements without question.

ALLEGED POLICY /PROCEDURE / LAW BREACHES

1. We believe the following Laws, if not others as well as the DEC's own policies, have been breached multiple times by the DEC both in the treatment of our son and others, and the investigative/inquiry processes they have claimed to undertake.

Children and Young Persons (Care and Protection) Act 1998
Child Protection Act 1999
Disability Discrimination Act 1992
Ombudsman Act 1974
Department's Responding to Allegations Against Employees in the Area of Child Protection 2010

ONGOING IMPACTS OF EXPERIENCES/RESPONSES

Trauma

1. The whole family is traumatized and affected by these events. Our son has been placed on medication for his anxiety/depression that it is suspected directly relates to his experiences at the unit.
2. He had regressed developmentally since attending at the unit.
3. Food – place on formula for nutrition, as eating had regressed. Cerebral Palsy Alliance / ADHC 2013
4. Incontinence (sore red sensitive bottom) – now is funded for nappies due to toileting regression Allied Health 2013
5. Speech – selective mutism. In 2013 he stopped speaking
6. Sensory – increased negative reaction to all stimuli. Noted by all therapists, Psychologist, Occupational Therapists, Physiotherapists, Speech Therapists
 - a. Severe anxiety/panic attacks/sweating/crying during nappy changing
 - b. stimming,
 - c. ticks have developed,
 - d. social anxiety - unable to go to busy areas (such as shopping)
 - e. car indicator noise
 - f. television adverts, microwave, toilets, water taps
 - g. medicated for anxiety/stress/depression
 - h. therapists unable to offer intervention until anxiety levels are lowered
7. We do not know at this stage the full extent of the abuse suffered but his educational psychologist believes such regression in a child with special needs is indicative of a child whom has been abused, witnessed the abuse of others or both.

POTENTIAL THREATS MADE TO FAMILY BECAUSE OF COMPLAINT.

Placement Threat

1. One of the accused, _____, contacts _____ by phone to 'interrogate' during the so-called EPAC Local area management inquiries.
2. 24 October 2013 _____ telephones _____ on two separate occasions, one occasion within the hour of _____ calling, stating to 'keep quiet' about complaint as 'we don't want a another Royal Commission'. He then stated 'keep your mouth shut or you will be the one investigated' and terminated the phone call.
3. October 2013 _____ (DEC staff) telephones _____ on more than one occasion, asking about complaint and offering placement for child.
4. October 2013 _____ and her spouse (Parents) makes complaint about suspected adult finger bruising, to _____. Informs _____ she is not proceeding with a complaint, having been offered an excellent placement.
5. October 2013. _____ speaks with _____ stating matter closed and asking if we will accept an excellent placement. October 2013. _____ sends a letter confirming above and also commenting on placement.
6. April 2015 _____ (DEC) informed of the above and the implication that our complaint was continually linked to being offered a place for support of our child. The implied threat being that if we did not drop the complaint, **we would be denied the place offered**. We chose to remove our son from the DEC rather than what we perceived to be, bribery and continually under threat.

Personal Investigation Threat

1. March 2015 _____ telephones _____ informing our complaint will not be investigated but _____ will be investigated for not educating child and that _____ will contact friends in the BOSTES to remove accreditation.
2. March 2015 _____ telephones _____ to ask why _____ was threatened. _____ backs down (still unaware of education experience of _____)

Public Defamation/Threat

1. April 2015 _____ aggressively accuses _____ and SBS crew of being potential paedophiles **in front of children and** other families at _____.
Filmed by SBS.

Physical Intimidation/Accessing Private Property/Threatening Behaviour

1. April 2015 _____ pulls open car door of _____ parked in the public street and verbally assaults him and television reporters. Filmed by SBS.

Personal Employment Potential Threat / Intimidation To Employer

1. May 2016. _____ phones _____ employer stating uncomfortable with working with _____ employer and _____ making complaints.

2. wrote in response to to assure him that professional and personal are separate.
3. made no attempt to contact at any point before this to state 'concerns'.
4. Why did he go directly to employer? This can be, and was, interpreted as an attempt to threaten financial employment and thus his family in his personal life.

RECOMMENDATIONS

1. There needs to be a review of training for staff working with children with special needs and disabilities.
2. Children must be given full access to education and also tools for engaging.
3. Teachers should not assault students
4. Students should not be 'disciplined' because of their disability.
5. Teachers who mistreat children with a disability should be disciplined or removed from the teaching register, dismissed from employment, and/or prosecuted.
6. Managers and DEC staff who cover up abuse of children with a disability should be prosecuted, and held accountable.
7. There should be an independent investigative body established.
8. Teachers who have accusations against them should be transferred from the situation whilst independent investigation is undertaken.
9. Children should be listened to.
10. Children should be given special provision when being interviewed, using independent, impartial, fully trained specialists.