

Submission
No 259

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

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EDUCATION AND DISABILITY ADVOCACY NSW
SUBMISSION TO INQUIRY INTO STUDENTS WITH A DISABILITY OR SPECIAL
NEEDS IN NSW SCHOOLS
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Education and Disability Advocacy NSW was formed to address the need for support and the sharing of information among parents and staff in conflict with, or concerned by, the Department of Education. We work by referral only due to the high risk of reprisals from the DoE and confidentiality is absolute, reflecting the fear that many people justifiably feel when dealing with the DoE. We represent not only parents but staff, who often find it impossible to speak up about victimisation due to the punitive culture of the DoE. Part of our role is to make known the stories of people who cannot speak out for themselves.

This submission is based on the experiences of some two hundred persons who were willing to share their experiences as parents of disabled children, associates or employees of the Department of Education. Some of them will have put in submissions of their own, while others will not. Most of them will not be referred to specifically, except where their circumstances are illustrative of a point being made. All statements made here have been verified, experienced, based on documentary evidence, or have been reported by sufficient numbers of people independently to support their plausibility. In the main this submission will deal with systemic failures within the Department of Education and related government agencies where relevant.

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The major failings in the Department of Education (DoE) stem from an almost total lack of formal leadership and a total lack of oversight. Informal, fragmented and non-legitimate leadership and a lack of accountability has produced a departmental culture which is based on fear and favouritism, is characterised by dishonesty and bad faith and which is most hostile to the very constituency it was established to serve. Disabled children and young people are among the most vulnerable clients of the DoE and are among the worst-served. After reading and hearing of the experiences of parents of disabled children it is plain that there is widespread hostility to, and lack of understanding of, disabled children. This is not consistent across all areas of the DoE, with some regions showing a disproportionate number of disquieting incidents involving disabled children.

TYPES OF COMPLAINT

The majority of adverse experiences related to physical restraint and abuse, victimisation, bullying, verbal abuse and negative attitudes to both children and parents. Bullying was perpetrated by both staff and other students. Approximately ten percent of complaints related to incidents which involved sexual abuse. Three incidents involved sexual assaults by other children, with only one resulting in legal

action. Two incidents involved inappropriate photographs taken by staff. All incidents were escalated by unhelpful or negative responses from the DoE.

COMPLAINTS HANDLING

Complaints handling by and on behalf of the DoE is conducted with the end in view of concealment. We have separately tracked the course of more than one thousand complaints - not all to do with disabilities - and found that not one was upheld. The complaints ranged from trivial to extremely serious, but this made no difference to the manner in which they were investigated nor to the outcome. All complainants unanimously observed that the DoE was not interested in the merits of the complaint, merely in defending the DoE. There is no detachment or any interest in solving problems. DoE officers are there to tick boxes, to explain away, reinterpret or ignore evidence in order to conclude that no wrongdoing has taken place and no mistakes have been made. Possibly this was initially to save embarrassment to the government of the day, but it is now a fixed part of the DoE's culture. Solidarity in the DoE requires parents to be seen as potential enemies, and the DoE is defensive and hostile. Newcomers to the DoE are inducted into this culture, and failure to embrace it is seen as breaking ranks and sometimes means victimisation. In no case have we found any awareness among DoE staff that they are public servants and that their role is to serve. Several themes emerged over and over independently from large numbers of complainants: where evidence was compelling, it was ignored or disappeared. All evidence which was addressed was interpreted in such a way as to be favourable to the DoE. If the person complained of was sufficiently senior, they would "investigate" themselves. If a complaint was "reviewed", it would be reviewed by a colleague of the person complained about. The outcome would not change. If awkward questions were asked or embarrassing evidence sought, these questions or requests would be ignored and/or glossed over. If the complainant continued to ask, the requests would again be ignored or glossed over. If the complainant continued to press for information the requests would be ignored. After a given number of communications, it would be deemed that the brief of "appropriate action" had been fulfilled and all further correspondence would be deemed 'campaign correspondence' and filed without response. Many complainants would be moved to tears or rage by the frustration engendered by these processes. If they expressed this to officers of the DoE they would be deemed vexatious, hostile or violent.

Parents without the knowledge or support to insist on due process were and are treated with contempt. Few parents were given information about the DoE's complaints handling process. Parents were given to understand that their complaint could not be handled according to the guidelines because they had not submitted their complaint in the approved form, although there is no such thing. Complaints were dealt with informally unless parents insisted on proper procedures, with little or no record of the complaint or its investigation. Parents were seldom given documents relating to their complaints, and it appears that often no documents existed. When their complaint was about a specific person parents were seldom allowed to see that person's response so were unable to refute or explain any matter therein. There was often considerable secrecy surrounding the identity of the person "investigating" a complaint, and unless parents were very familiar with the complaints handling procedure they were given multiple explanations of why their concern was not actually a "complaint" or why it could not be taken further. In all cases the

complaint was not upheld.

If complaints had the potential to be seriously embarrassing, or the complainant was persistent and/or sought media attention, more serious consequences would follow. Complainants might be barred from school premises. The complainant's child might be bullied at school by staff, or might be bullied by other students with staff refusing to take action. The children might be punished for trivial offences, subjected to verbal abuse or suspended. If children of complainants were absent from school for medical reasons a report would be made to the home-school liaison officer, despite the production of medical certificates. When parents asked for support, for changes in the way their children were treated, or tried to explain that the children were disabled, not naughty, a surprising number were told that their child was not disabled/did not have that particular disability/did not need support or deserve more care in behaviour management. Many parents we spoke to were unable to believe that school principals and more senior staff could dismiss the reports of psychologists, psychiatrists and paediatricians, but they commonly did so. One School Education Director, _____ was asked what qualifications he had to dismiss the diagnoses and concerns of a clinical psychologist, a treating psychologist, an occupational therapist, a speech therapist and a carer and substitute his own diagnosis for a child whom he had never seen. His response, apparently made in all seriousness, was that his qualifications and experience as a teacher enabled him to diagnose any child in his school network. Sometimes the children's disabilities were ridiculed in front of the children: at least one principal is known to have told a child, "You're not autistic." This suggests that training and awareness among staff is poor: it also suggests that in the closed culture of the DoE there is a serious disconnection from reality.

In other cases, a psychologist employed by the DoE would be called in to produce a diagnosis or recommendation at variance with those made by the child's treating professionals but which bolstered the DoE's arguments. On occasion this psychologist or other staff would observe, interview and report on children without parents' knowledge or consent. _____ is a senior psychologist with the DoE who works closely with Executive Director Frank Potter and has been named several times as the source of reports which supported the DoE. Some reports were written without seeing the child. Others were written without parental permission being sought for any such report.

Considerable secrecy surrounds these reports. On one occasion the parent was present at the school when a DoE officer arrived. She asked if the DoE officer was there to "look at" her child. The officer replied, "No." When the parent left, the officer completed an observation and wrote a report which was later used in a Human Rights Commission hearing. This observation had been ordered by _____ co-ordinator of student support (disability programmes.) When a complaint was made to him about the officer's dishonest behaviour, _____ "investigated" it and found the complaint without substance. _____ also refused to give the parent a copy of the report. He also mocked the parent and gave her to understand that she had no power to do anything about his behaviour as he had the support of Executive Director Frank Potter.

At a more serious level, parents of disabled children would find themselves

threatened with reports to FACS. Almost a quarter of complainants had received such threats, sometimes directly, sometimes through anonymous phone calls. Threatening phone calls were not uncommon. Complainants seeking media attention were sometimes told “You’d better keep your mouth shut,” or even “You’d better keep your mouth shut if you want to keep your kids.” Not all threats were carried through, but an alarming number were.

The DoE’s relationship with FACS appears to be irregular. Most reports to FACS of which we have heard were made directly by DoE staff to FACS officers and all appear to have been followed up without preliminary assessment. The reports all followed conflict between parents and the DoE.

In some cases the matters reported were speculative, easily disproved, were matters of which staff had been aware for months or years without any alarm being raised, or were openly admitted by FACS staff to have been formulated by themselves at the behest of DoE officers. In some cases there were no specific allegations and FACS officers explained that they would be investigating the family concerned in the hope of identifying or precipitating “vulnerabilities” which might form the basis of intervention. In cases where officers of disabled support groups or other services supported the families under investigation they were sometimes threatened, ordered to withdraw their support, recommended to alter or “lose” documents and meeting records or even to allege that letters of support they had written were forgeries perpetrated by the families. FACS staff were reported to be hostile, to interview children at school without an adult present, and to boast that “We don’t have to answer to anyone.” An unknown number of complainants have in fact had their children removed by FACS. When parents have attempted to tell their stories to the media, journalists making inquiries have been told - falsely - by FACS officers that it is illegal to publish any information about the actions of FACS workers and told - again falsely - that FACS has the power to decide whether a child’s name can be published, whether that child is in the care of its own parents or not.

The DoE also seems to exert or assume authority over a number of other organisations. DoE officers have contacted members of NGOs, including the Samaritans and other providers of early intervention support and out-of-home care, questioned their qualifications and ordered them to withdraw support from parents with whom the DoE was in conflict. school counsellor is one staff member known to have done this. The DoE also has an unhealthy influence over the media, particularly some sections of it. While there is a tacit agreement that media outlets will reserve investigative work and trenchant criticism for elected politicians and non-government bodies and generally leave government agencies alone, the DoE enforces this agreement to the point where its actions may border on the illegal. Journalists and editors have been threatened with reprisals for publishing articles impliedly critical of the DoE, or for giving greater prominence to a complainant’s story than to the DoE’s response.

There are questions over the attitude of health authorities and their relationship to the DoE. It is a matter of record that disabled persons are routinely given a lower standard of health care. Some parents who took their children to public hospitals following physical abuse by DoE staff found that hospital staff refused to become involved when told that the injuries were the result of reportable behaviour. Evidence

disappeared or was altered. Health authorities refused to produce medical records which could be used to pursue the matter. Two children of parents in conflict with the DoE died in hospital from preventable causes.

There are effectively no avenues of complaint for parents to pursue after exhausting the DoE's internal processes. Approximately one quarter of complainants made further complaints to the NSW ombudsman. Consistent patterns emerged from their accounts. None had their complaints upheld. In almost half of cases the ombudsman's office declined to investigate, sometimes for reasons which were implausible. [redacted] declined in one instance to investigate a complaint against executive director Frank Potter on the grounds that the ombudsman "may not investigate a minister of the Crown". In most other cases the ombudsman's office would "investigate" and produce a report, sometimes in a reasonable time, sometimes months later. In all cases the preferred method of communication was verbal. Complainants were often dissuaded from producing documentary evidence in support of their claims. The ombudsman's investigator was hostile and suspicious and would often express disbelief that the complainant was making an allegation against members of the DoE. Sometimes the complainant would be warned that their allegation was serious and that they would have to substantiate it or risk serious consequences. It was almost never suggested that the investigator would look into it and decide impartially if it had substance. If the complaint had a number of elements, the "allegations" which the investigator chose to pursue were rewritten so as to have no relationship to the original issues. These "allegations" were invariably trivial and were often matters about which the complainant had never expressed any concern. This was explained by the ombudsman's officer as the legitimate use of wide discretionary powers to investigate anything they saw fit, whether it was related to the original complaint or not. If the original complaints concerned senior members of the DoE the ombudsman's response would be written so as to exclude not only the name of these personnel but any mention of or concern about them. All responses followed a similar pattern in that the investigator formulated an allegation or set of allegations and then sent these to the DoE. The DoE denied them. These denials would be produced as evidence that the allegations were unfounded. No opportunity was given for the complainant to point out any flaws in this.

A large number of complainants dealt with [redacted] either as an investigator or as the reviewing officer where the complainant was not satisfied with a response. [redacted] professes not to recall ever having made an adverse finding against a DoE officer in his long career. Documentary evidence reveals [redacted] as reassuring DoE staff that he will be dismissing a complaint some months before the complainant was informed that he had done so. During these months he was ostensibly "investigating" at length. In one matter being investigated by subordinate the complainant informed the officer that she would be sending documentary evidence of her concerns. The officer strongly requested that she not do so, but the documents had already been sent. They did not form any part of the investigation. At its conclusion [redacted] admitted that he had the documents but since they had arrived - through the post - allegedly without an address or covering letter was unable to pass them on. He admitted to working with the investigating officer and admitted to being familiar with, and being consulted on, the complainant's matter. When asked where the documents had gone he admitted to having passed them on to their intended recipient as soon as the matter was finalised, having

known for whom they were intended all along.

Subsequent to the announcement of this inquiry a flurry of activity appeared on several fronts. The ombudsman's office continued to function at the lower level precisely as it always had.

Also in an apparent response to this inquiry, the same advocacy groups have contacted complainants and arranged meetings with senior DoE staff who were purportedly anxious to "resolve" their complaints. DoE staff often gave only a first name or no name at all. Some complainants have refused to attend. Those who did attend were questioned by DoE staff and asked to produce all documents they had in relation to their complaints as well as the names of other people they had consulted. When they produced these all contact with the DoE was at an end. Some of these complainants felt "betrayed" as well as apprehensive that they had provided the DoE with ammunition against them. They also felt that by providing their evidence they had given the DoE sufficient information to prepare a defence to the complaints.

Still other complainants were contacted by officers of the DoE without intermediaries. These officers professed to be working on behalf of a senior DoE official, (believed to be the Deputy Secretary of School Operations) and were anxious to "resolve" complaints, some of which had been ignored or denied for years. Complainants were warned that they must not speak to the media or tell anyone about their issues. Those who went to the meetings generally found that the DoE officers were anxious to secure the details and documentary evidence relating to the complaints, along with the names of associates, confidantes and media contacts. If these were forthcoming there was usually no further offer of resolution. In some cases, however, complainants were offered compensation on condition that details of the complaints remain confidential and that the complainants not make submissions to this inquiry.

Recourse is limited following failure by the ombudsman. The Human Rights Commission has no power to compel, having lost its tribunal powers. All complainants who had been to the HRC stated that representatives of the DoE had legal representation, which the complainants generally did not. No admissions were ever made and the DoE was neither conciliatory nor honest. Further recourse to the Federal Court is expensive, carries a large element of risk, and is intimidating to some parents.

SEXUAL ABUSE

The case with suspected or actual sexual abuse is even worse. Staff admit that sexual abuse of both disabled and able-bodied children is not uncommon in schools. Types of abuse vary, but staff unanimously agree that it is almost impossible to report colleagues for this type of offence for fear of reprisals. The DoE does not wish to acknowledge that sexual abuse occurs in schools and will take steps to silence whistle blowers. The only exception to this rule is where the suspected perpetrator is “on the outer” or out of favour with superiors, and even then the matter would be dealt with “under the table”, with the perpetrator taking a less favourable job or resigning apparently voluntarily rather than being dealt with as a sexual offender. The notorious case of _____ is a blueprint for the DoE’s methods in these cases.

In other cases of sexual abuse the pattern is as follows: the DoE professes to have conducted an investigation and made the necessary reports, including reports to police. Parents are not involved in the investigation and are never given any documents: all communication is verbal. Inquiries made to police reveal that there is no record of the “reports” made to them. Attempts by parents to obtain any details or documents about the incidents are referred to legal representatives or ignored. Sometimes no admission is made that the incident has occurred, sometimes promises are made that full documents will be forthcoming, but they do not appear and eventually the DoE ceases to respond to requests.

A number of complainants over the past two years had made, or attempted to make, submissions to the Royal Commission. The reception of these submissions is deeply disturbing. In some cases the submissions were ignored. None was published or made the subject of further investigation. No media outlet would publish any details of the cases. Frustrated parents contacted the RC to ask when a hearing might be held into the DoE so that they might share their experiences, but all such approaches were ignored.

The conduct of the RC in this matter highlights the lack of effective accountability of government agencies. In 2014, following the identification of ambiguities in its terms of reference and a high level of media coverage of religious institutions, the RC conducted a telephone survey to determine whether the public had a clear idea of its functions. The majority of those surveyed believed that the Commission was inquiring into religious institutions only. The RC then produced a fact sheet which was published on its website and made available at public libraries: this fact sheet specifically stated for the first time that the terms of reference included abuse in government departments. No press release appeared highlighting the changes and

no media coverage appeared. No follow-up survey was done to assess the effectiveness of the fact sheet . The level of public misunderstanding was presumably therefore not significantly lessened. A number of complainants to whom we spoke still believed that the DoE was exempt from the RC's investigation and highlighted the need for an RC into government departments. Those complainants who had made approaches or knew of approaches to the RC generally held cynical and derisive attitudes towards its functioning and integrity. These attitudes appear to be fully warranted by experience.

HUNTER-NEW ENGLAND REGION

Two-thirds of complaints of which we have knowledge concerned schools in the Hunter-New England region. The Executive Director for this region is Frank Potter, who quite often appears personally in matters involving disabled children. His attitude is personally unsympathetic: on one occasion he publicly stated that a disabled child with behavioural disorders needed to "move on with his life" and "get into the real world." The child was eight years old. He further professed to know "just by looking at him" whether the child needed to be enrolled in a special unit.

LACK OF LEADERSHIP

Information from within the DoE along with documentary evidence reveals a failure of formal leadership. The Minister for Education (MoE) does not deal with operational matters, but it is clear that the Minister has for many years had no control over the DoE. Effective power has rested with the Minister's advisor and certain officers within the DoE. These officers do not include the Secretary, the titular head of the department. Neither the Minister nor the Secretary have access to information except through officers of the Department. False, incomplete and misleading information is routinely given to both the Minister and the Secretary. Even more information is withheld.

The previous Minister for Education was almost totally sundered from any knowledge of the realities of his portfolio, and this was considered necessary by the DoE. The possibility of information uncensored by the DoE reaching the Minister caused panic among DoE staff. When a parent with an issue with the DoE met with a minister heading another portfolio and successfully requested that minister to send a letter of representation to the Education Minister, the resulting reaction from the DoE was revealing. We have seen emails from DoE staff asking how it was possible for a constituent to have met with any politician on an education matter without the DoE's knowledge. Staff were asked why the meeting had not been prevented - by unspecified means and on unspecified grounds. The letter of representation was intercepted by the Education Minister's advisor and sent straight to the DoE. It never in fact reached the Minister, to the relief of education staff, who noted that 'at least this (the letter of representation) came from _____ not the Minister.

In the absence of official and accountable leadership, effective leadership within the DoE has been established by means which have allowed an undesirable culture and many abuses to flourish. A considerable number of staff at different levels were willing to share their views on departmental culture. As one staff member who had been moved sideways to allow a more "favoured" candidate to take over her job said, "It isn't about how well qualified you are, it's about who likes you and what you're prepared to do. You wouldn't want to know what goes on at this level." Staff at all levels gave it as their opinion that there was a high level of tension and mistrust in staff relationships. "No-one dares to speak frankly any more because you can't be sure who's listening and who they'll tell." Staff reported that there was no support, that all but a favoured few were isolated and that no one was offered help by their superiors without strings attached. Reports of DoE officers building "cliques" around themselves in which members could expect promotion and favours while outsiders were passed over, ignored or victimised were received independently from a number of staff. Spite, malice and very childish "troublemaking" behaviour appeared to be very common in interpersonal transactions at all levels. Victimisation included forced transfers or retirement, disciplinary action, child protection reports and even legal action.

Part of this problem stems from the closed structure of the DoE. To a very high level promotions are internal. Teachers do not necessarily have administrative ability or a public service ethic, and may be so enmeshed in internal politics as to find professional detachment impossible. Competition to move out of the classroom into non-teaching roles is extremely strong, which gives those who control promotions a great deal of power. This power is often misused. Part of the "test" for promotion may be a demonstration of loyalty to the DoE or more specifically to one's superior. Occasionally this involves inappropriate personal services, but this is not the norm as

far as we are aware. The ability to be “totally unscrupulous” is a prerequisite for promotion, according to one staff member. At times this may include victimising parents, children or other staff members. Making false allegations, false statements in complaints procedures, maintaining absolute secrecy about departmental irregularities and making false child protection reports may be part of the “test” of loyalty.

Promotions are thus not merit-based. Numbers of staff and parents singled out DoE officers, some in senior positions, whom they believed to be of less than ordinary competence.

CONCLUSION

The poor calibre of staff within the DoE is a major concern. The appalling nature of DoE culture and the extraordinarily unacceptable behaviour of staff cannot be overstated. However serious it is stated to be, the reality is worse. This is true at all levels, but the higher the level, the worse the culture. Public servants should be able to do their work with professional detachment, and while this may be rare, in the DoE it is simply not seen. Officers do not seem to see themselves as representatives of the DoE, but as part of a group in which power struggles are common and everything is taken personally. Senior officers use their positions to spend public money on putting their personal whims into practice. This is an appalling basis on which to implement policy but it is inevitable because DoE staff appear to lack the capacity to act professionally: were the staff of a higher calibre the culture of the DoE would not be what it is, and the need for regulation would be less. Unfortunately, the DoE has failed the test of self-regulation. There seem to be no such things as professional relationships as officers are always concerned with their personal feelings, rights and powers, and jealously guard these. If other staff are not sufficiently sycophantic they will be punished. If parents are “troublesome” the staff dealing with them will react personally, take offence and take steps to teach them their place. The level of hostility to children, parents and other staff in the DoE is exceptionally high, but it is a worrying aspect of this department that staff do not seem to moderate their behaviour in response to any legal or moral constraints. This again is a consequence of the poor calibre of staff: they are not self-regulating, and a total lack of outside regulation has led to an astonishing disconnection from reality or wider norms of

reasonable behaviour. The prevalence of reports to FACS, particularly with instructions to remove children from their parents, illustrates this. If children are put into care their prospects are very poor, and parents' lives and reputations may be ruined. Any person with a knowledge of the laws, regulations and policies governing mandatory reports should be very cautious about making these. Any person with a reasonable moral compass would not make such a report lightly. Yet in the DoE some staff make reports to FACS, with their potentially tragic consequences, in a fit of temper. They use such reports as a weapon to "get back at" anyone who displeases or challenges them - and it is extremely easy to displease these people.. This is almost inconceivable behaviour, as is concealing physical and sexual abuse of children, threatening parents, falsifying documents, perverting complaints procedures from an often pointless desire to "win" at all costs, and contacting parents' employers to order or persuade them to dismiss those parents. Unfortunately, years of experience of the DoE has made it clear that inconceivable behaviour is the norm.

The problems within the DoE will not be solved by this inquiry. They will not be solved without the removal of many current officers, the establishment of a truly transparent and independent body of oversight including parent representation and with the power to compel, the re-establishment of media independence, and the opening of promotion positions within the DoE to external applicants.