

Submission
No 55

**INQUIRY INTO CHILDREN AND YOUNG PEOPLE WITH
DISABILITY IN NEW SOUTH WALES EDUCATIONAL
SETTINGS**

Organisation: NSW Ombudsman

Date Received: 4 March 2024

4 March 2024

Ms Abigail Boyd MLC
Committee Chair
Portfolio Committee 3 – Education
By email:

Dear Ms Boyd

Children and young people with disability in New South Wales educational settings

Thank you for your invitation to make a submission to the above inquiry.

The committee is inquiring into the current levels of access and attainment for children and young people with disability in New South Wales educational settings.

In this submission we briefly outline:

- (a) functions of the NSW Ombudsman in relation to the NSW Department of Education (DoE) and public schools related to the educational services provided to children and young people with disability.
- (b) our current complaint handling work, and previous work we have done in this area, including in particular our Special Report to Parliament in 2017 about behaviour management in schools.

Relevant functions of the NSW Ombudsman

Complaints and investigations

The NSW Ombudsman is an independent integrity agency that pursues fairness for the people of NSW. We strive to ensure that those entrusted with public power and resources fulfil their responsibilities and treat everyone fairly.

A central function of the NSW Ombudsman is to receive complaints about the conduct of NSW public authorities, to promote resolution through inquiries and (informal and formal), and where appropriate to conduct formal maladministration investigations. The public authorities we oversight include State Government departments and agencies, NSW statutory bodies, and local councils.

In the education context, the NSW Ombudsman can receive complaints about (and, where it appears there has been wrong conduct, investigate) the administrative conduct of the DoE and public schools in NSW. Anyone can make a complaint to us. In the educational context, we receive complaints from parents/carers, students, teachers and other employees of the DoE, as well as members of the general public and MPs on behalf of constituents.

Complaint-handling by agencies

Under amendments to the Ombudsman Act enacted in 2022, the Ombudsman has additional powers in respect of overseeing the handling of complaints by agencies, and in particular:

- Reviewing the complaint handling systems of public authorities – this new function under s 25A of the *Ombudsman Act 1974* extends on our earlier work on the Complaint Handling Improvement Program between 2016-2018 which led to a range of complaints handling reforms across the NSW Government sector. In 2024, we will be establishing a dedicated complaint handling system review unit.
- Referring a complaint made to us about the conduct of a public authority to that public authority for investigation – this new provision under s12A of the Ombudsman Act is an additional tool for NSW Ombudsman staff to utilise when determining the appropriate action to address complaints. The provision enables us to closely monitor the conduct of the public authority's investigation, and the public authority is required to report back to us on the outcome of our referral.

Public Interest Disclosures oversight

We oversee the public interest disclosures (PID) scheme in NSW.

Our role includes providing advice, guidance and training about the new *Public Interest Disclosures Act 2022* (PID Act), which commenced on 1 October 2023. We also have statutory powers to monitor and audit the exercise by agencies of functions under the PID legislation. This may include audits of relevant public authorities, including the DoE.

Recent work of relevance to subject matter of the Committee's inquiry

In August 2017, we tabled a Special Report to Parliament under section 31 of the Ombudsman Act following our *Inquiry into behaviour management in schools*.¹

The inquiry was a major piece of work for our office at the time and was initiated as behaviour management in schools had features in a significant number of complaints and other matters (including employment related reportable conduct²) brought to the Ombudsman's Office.

The report focused on issues concerning students with complex needs and challenging behaviour. Amongst other issues, the report identified that students with disability or other additional needs, Aboriginal students, and students in out-of-home care were disproportionately represented in suspensions.

The inquiry was not a formal investigation of alleged administrative wrong conduct. It was published at the same time as the NSW Parliament was conducting an inquiry into the provision of education to students with a disability or special needs in schools in NSW.³ It was hoped that the report would assist that inquiry and, to that end, the findings in the report were framed as 'proposals for reform' rather than final recommendations.

We made 39 proposals for reform to, including (but not limited to) that the Department should:

- a) Work with schools to implement the Positive Behaviour for Learning Framework.

¹ NSW Ombudsman report: <[NSW Ombudsman Inquiry into behaviour management in schools. A Special Report to parliament under s31 of the Ombudsman Act 1974](#)>.

² This function moved to the Office of the Children's Guardian in 2020.

³ Portfolio Committee No. 3 – Education, 'Inquiry into the provision of education to students with a disability or special needs in government and non-government schools in New South Wales schools'.

- b) Assist schools to identify when functional behaviour assessments might be necessary and provide guidance in relation to undertaking those assessments.
- c) Support schools to access appropriate expertise and training.
- d) Review guidance in relation to the use of restrictive practices, time-out strategies, and the use of suspensions.
- e) Collect data around suspensions and expulsions of students with disability or other additional needs and/or in out-of-home care.
- f) Improve its complaints handling system by implementing a complaints database to monitor trends and outcomes, including a strong focus on students with disability and additional support needs.

In 2021, the DoE advised us it was planning to implement a new *Student Behaviour Strategy*, which would draw on the issues identified in our 2017 special report and information gathered by the department through stakeholder consultation and data analysis. Additionally, that data collection systems would be strengthened under the new strategy to monitor and evaluate interventions and their impact on different student cohorts.

The DoE commenced a review of the *Student Behaviour Strategy* in 2023.

We continue to receive complaints from time to time about public schools, including complaints that relate to a student with disability and/or raise disability-related issues.

In the last 2 years (1 January 2022 to 31 December 2023) we received 580 actionable complaints about the DoE (including public schools).⁴

The complaints we received in recent years related to a broad range of issues, and some of those complaints will have concerned a person with disability and/or raise disability-related issues. Of relevance in our public reporting:

- In our *Annual Report 2021-22* we noted that we had continued to receive complaints about student suspensions, including in relation to Aboriginal and Torres Strait Islander children, children with disability, children who have experienced complex trauma, and/or children in out-of-home care.⁵
- In our *Annual Report 2022-23* we included a summary of our handling of a complaint about delays arranging travel for a student with disability requiring support through the DoE's Assisted School Travel Program.⁶

Our office does not have visibility of all complaints by or about a student with disability in a public school in NSW, as the vast majority of these will be made at local level and/or to the DoE and would not be escalated to us.

We acknowledge the importance of adequate support for children with disability in public schools as well their families and look forward to the outcomes of the Committee's inquiry.

⁴ An actionable complaint is a complaint that we are authorised by legislation to receive and, if necessary, to investigate under the *Ombudsman Act 1974*. Note that this data excludes complaints about TAFE, TAFE Digital, NSW Education Standards Authority, Early Childhood Education Directorate, Training Services NSW, or Schools Infrastructure.

⁵ NSW Ombudsman report: <[NSW Ombudsman Annual Report 2021-22](#)>.

⁶ NSW Ombudsman report: <[NSW Ombudsman Annual Report 2022-23](#)>.

Please contact Christie Allan, Executive Strategy Officer at
further information about the NSW Ombudsman’s office or this submission.

if you require

Yours sincerely

Paul Miller
NSW Ombudsman