

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 3 – EDUCATION**

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

**At Macquarie Room, Parliament House, Sydney on Friday, 11 August 2017**

**The Committee met at 2:00 pm**

**PRESENT**

The Hon. Lou Amato (Chair)  
The Hon. Greg Donnelly  
The Hon. Natasha Maclaren-Jones  
The Hon. Taylor Martin  
Reverend the Hon. Fred Nile  
Mr David Shoebridge



**The CHAIR:** I welcome you all to the final hearing of Portfolio Committee No. 3—Education; the inquiry into the education of students with a disability or special needs in government and non-government schools in New South Wales. This broad-ranging inquiry will consider a number of important issues including equity of access to resources for students with disability or special needs across the State, the Every Student, Every School policy and current complaint and review mechanisms. It is important to point out that this inquiry is not intended to investigate individual cases, but rather to consider broader policy solutions to the issues raised in the terms of reference. Before I commence, I acknowledge the Gadigal people, the traditional custodians of this land. I also pay respects to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today we will hear from the Deputy Ombudsman and the Director Disability from the Office of the NSW Ombudsman.

Before we commence I would like to make some brief comments about the procedures for today's hearing. In accordance with the broadcasting guidelines, while members of the media may film or record committee members or witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence, as such comments would not be protected by parliamentary privilege if any person decided to take an action for defamation. The guidelines for broadcasting proceedings are available from the secretariat.

There may be some questions a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Finally, could everyone ensure that their mobile phones are turned to silent for the duration of the hearing. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones.

**STEVE KINMOND**, Community and Disability Services Commissioner and Deputy Ombudsman, NSW Ombudsman, affirmed and examined

**KATHRYN McKENZIE**, Director Disability, NSW Ombudsman, affirmed and examined

**The CHAIR:** I welcome representatives of the New South Wales Ombudsman. Would either of you like to make a short opening statement?

**Mr KINMOND:** Yesterday we tabled in Parliament a report in connection with our inquiry into behaviour management in schools. If I could briefly outline some of the major findings from that inquiry, that might be useful for today's hearing. Our inquiry related to best practice. We are seeking to find best practice in relation to behavioural management in government and non-government school settings and looked at what would become of some of the key practice and systems issues that emerged. In this regard, I refer to the 39 reform proposals in our report, but today I would also like to emphasise a couple of broader systems and practice issues.

First, the importance of expert leadership, the right culture and training, came through very strongly through the inquiry from talking to many people. In relation to these related areas, let me emphasise the particular things that were made clear to us from the inquiry. Culture and attitude: from parents, academics and coalface educators we heard over and over again how skilled leadership is critical to whether a genuinely inclusive education is being provided to students with disabilities as well as students with challenging behaviour and complex needs. We also heard of the importance of enhancing baseline skills and training for certain roles. There is a need to identify what is required in terms of professional learning that should be mandatory. For example, for principles the disability standards for education and their practical application, we believe, should be mandatory. Thirdly, in terms of this broad area, there is expert support.

The report details the substantial number of specialists who work within the department. However, we are consistently told by educators that these specialists need to have the expertise to provide the coalface support that is required. Our report also recognises the need for the department on occasions to bring in external expert assistance. Another area in the need for expert support relates to the rollout of Positive Behaviour for Learning [PBL]. This program's potential effectiveness in this area is not in doubt. However, its rollout requires good systems and good technical support. In addition, we emphasise that it is important for the department over time to expand the base of experts within its schools. In this regard, we have suggested systematic identification of future leaders in this area within school settings, with a clear plan to give them the best training and experience. Once they are trained and experienced, they will then be used to train others so that over time we build the number of experts at the coalface within the school setting.

Secondly, in our report we considered a range of discrete issues, which are particularly relevant to the response by schools to behaviours of concern. This has clear relevance in relation to certain children with disability. The use of timeout strategies, including dedicated timeout rooms and seclusion; the use of restraint; the use of part-day attendance and distance education options; the use of suspensions and expulsions—in connection with all of these areas, we believe that within and across schools, they provide a litmus test to whether an inclusive education system is being delivered. From our expertise in reviewing disability services, we can say that there need to be substantially enhanced checks and balances and related monitoring of practice in these areas, so that we can be confident as a State that the practices are lawful. So that we can be confident that these practices are seeking to address the underlying causes of behaviour and not just the presenting behaviour. So that we can be confident, as a State, that expert assessments are being carried out and reviews are being undertaken, particularly when needs are complex, and we need to see a much greater partnership being adopted between the schools and the parents and the students so that these things are not done to students but that there is work with students in partnership with parents.

Thirdly, and this is related to the point I have just made—in our report we go on to discuss the governance issue—I will not go into too much detail, but essentially what we are saying is that the department potentially has access to a range of data where they can crossmatch data relating to children with disability and complex needs with suspension data, part-time exemption data, non-attendance data, teacher directed use of time-out rooms, incident reports, and the use of restrictive practices. That data analysis should then enable the department, in a more sophisticated way, to track trends within schools and across schools, within districts, and between different districts. That should provide a useful base of intelligence. We have a range of associated recommendations pertaining to that issue.

In addition, in respect of governance, we have argued that the department should look at how schools can best provide public reports on the use of the integrated funding support component for the funds provided to

schools through the resource allocation model [RAM], particularly as it relates to kids with disability, to facilitate greater accountability and transparency on this issue. That is a substantial amount of funds. As a community, we need to have a better line of sight on the use of those funds. Another critical area is that we need to acknowledge that many of the children with challenging behaviour and children with disability have complex needs and require a multi-agency response. We have argued that in light of the success of multi-agency models being dependent on the strength of the overall partnerships developed between agencies, including the operating framework and governance arrangements of these partnerships, both the department and other key agencies should institute a system for the ongoing review and analysis of relevant interagency work.

Given the vital importance of this work and the critical need to identify and replicate interagency issues that are effective in identifying children most in need of a multidisciplinary response and delivering a tailored multidisciplinary response, it is crucial that the response to this proposal be led by heads of relevant government agencies who have the power and authority to bring their agencies together to work with other agencies so that they employ an action learning approach in identifying and embedding sophisticated interagency initiatives across the State. It is very easy to talk about collaborative practice; it is very hard to deliver it. We are arguing that this is an area in which the heads of agency should have lines of sight and they should drive this work. They should be assessing whether the multiple numbers of interagency initiatives are working. Where they are working, they should replicate them and scale them up.

We also need to acknowledge the critical need for strong partnerships with parents, carers and external experts as well, both in respect of individual matters. Also, we would argue that there ought to be a standing committee with parents and external experts working with the department in respect of examining systemic issues. This ought not to be something that the department does on its own. It ought to be something that is done with parents and external experts and there ought to be a standing committee that reviews this in an ongoing sense. That is all I am going to say by way of opening introduction. I have other points that I would like to make in respect of the reportable conduct scheme and complaints in terms of our role and challenges for the department, but I have probably said enough already.

**Mr DAVID SHOEBRIDGE:** Thank you for the report. I have to honest, it is a lengthy report. I have read 15 pages of the executive summary and I have sampled the balance and I have reviewed quickly the recommendations but I have not read every page. We only received it yesterday.

**Mr KINMOND:** I apologise.

**Mr DAVID SHOEBRIDGE:** In respect of the issues that are raised, I found what I read to be quite disturbing. For example, we have known for more than a decade that the positive behaviour learning [PBL] framework is the best way so far to address children's behaviour problems—keep them at school, keep them engaged, but only 50 per cent of public schools have the program in place. Why only half the schools and how do we get it to 100 per cent?

**Mr KINMOND:** The department, it is good to note, is injecting an additional \$15 million of funding into positive behaviour learning, so one would hope that we would see a substantial increase in the take-up. It is not just about whether schools have taken up the program. The question is whether there is program fidelity, because the success of the program is dependent upon it being properly executed.

**Mr DAVID SHOEBRIDGE:** I think they are going to have 36 additional positions. We are talking about the need to roll it out in an additional 1,000 schools. That maths does not work for me—36 positions rolled out in 1,000 schools. How do we close the circle and make it happen?

**Ms McKENZIE:** PBL is one framework. There are others. We have certainly highlighted PBL because it is internationally recognised—

**Mr DAVID SHOEBRIDGE:** Because it has data and research behind it.

**Ms McKENZIE:** Also, a lot of it is premised on evidence base, having the data, which is a heavy focus in our report; the importance of having data that can drive practice. Part of what the department has indicated it is intending to do as part of the increased resources it is putting into this area is to take a proper look at PBL and look at what else is needed, but also how it is operating in New South Wales.

**Mr DAVID SHOEBRIDGE:** The 1,000-odd schools that do not have PBL in place, how are they dealing with it? Is it ad hoc, whatever comes to hand?

**Ms McKENZIE:** Again, PBL is a framework so there are lots of different programs and obviously the department has a range of policies and procedures which are strong in a lot of areas. They are not without guidance and they are not without an overall framework around behaviour support. There are a lot of components there, it is just having the overarching framework that is heavily reliant on the data and the rigour

that is needed to be brought to it. We do not disagree with the need for PBL to be increased across public schools in New South Wales. It is important to recognise it is also adopted in a number of non-government schools as well.

**Mr DAVID SHOEBRIDGE:** That is what I was going to ask next. There is a reasonable amount of data I have seen about public schools, but what is the extent to which PBL is being rolled out in private schools and non-public schools?

**Ms McKENZIE:** We do not know the extent to which it is rolled out. The feedback from peak bodies in non-government schools is a whole range of non-government schools have adopted PBL or implement practice that is consistent with PBL, but we do not know the data and the numbers of schools.

**Mr KINMOND:** These are very big issues that are not going to be resolved quickly. As a result, we have said these are critical to whether kids get a decent education. Therefore, if we think it is a significant issue, if it is critical to whether kids get an education, in that context our argument would be is why not have an external committee so that parents are represented, experts are represented, and the department has got to show it is represented and has a strong commitment to working in partnership, and then these issues can be worked through over time with some openness and transparency.

**Mr DAVID SHOEBRIDGE:** Would it be the intent that the committee operate for both public and non-public schools?

**Mr KINMOND:** I think that would be desirable.

**Mr DAVID SHOEBRIDGE:** When we are talking about Positive Behaviour for Learning, the fact that it has not been rolled out begs the question of what schools are using to deal with behavioural problems. When I look at your report on restrictive practices, there are guidelines in place. Maybe I am being too hard, but it seems routine that those guidelines are not being complied with.

**Ms McKENZIE:** Certainly there are occasions where the evidence absolutely indicates that they are not being complied with.

**Mr DAVID SHOEBRIDGE:** In one of your case studies, a child with a disability was locked in a time-out room for three hours. No risk assessments were conducted; there was no local policy to guide staff; staff did not know the school's policy in relation to discipline, welfare, restraint and escorting; staff used restraint and physically escorted students; and use of the time-out room was contrary to the department's guidelines—and this is one instance.

**Ms McKENZIE:** I think what really stood out to us from a number of the case examples we provided, but overall in conducting this inquiry, is that in a lot of ways in a lot of areas the department's guidance is actually not bad—it is consistent with Positive Behaviour for Learning and it is consistent with a positive approach to behaviour support. The issue is compliance with the guidelines and the pretty decent requirements that are in place, and that is what we have tried to get to in some of the proposals that we have made.

**Mr DAVID SHOEBRIDGE:** Great guidelines, but they are not being complied with. Kids are being locked in rooms inappropriately. What is the extent of that as an issue? Are we talking about two kids, five kids—how many?

**Mr KINMOND:** I think it would be fair to say we do not know, because that would require more rigorous systems for collecting and analysing data and incidents.

**Mr DAVID SHOEBRIDGE:** Should there be a requirement that, whenever a child has been put in a time-out room or in any way restrained, there is an automatic report to your office so that the data is collated and someone is actually checking?

**Mr KINMOND:** I think the feedback we got from principals was interesting in this regard, where they said, "Look, there would be real benefits in clarity concerning, for example, what is and isn't acceptable in terms of a dedicated time-out room." We would argue that it needs to be writ large that seclusion is not an acceptable option and it ought to be spelt out what seclusion involves—namely, that a child's freedom of movement cannot be restricted. We have compared the practice, for example, with what we have observed in the disability area. The disability area is much more explicit in terms of what is and is not acceptable. Where there are restrictive practices in play, there is an independent expert review that is expected to be undertaken. We would argue, and the disability sector itself would argue, that there is still room for improvement in relation to disability service delivery, but our review of this area is that in the disability service field the practices, the policy and the operating framework is more rigorous than in the schools sector.

**Mr DAVID SHOEBRIDGE:** If my child was physically restrained, frogmarched into a room and locked in that room for a period of time at school, it would be my expectation that a review would immediately be triggered. But that is not the case: It is not happening for these instances of physical restraint. Is that right?

**Mr KINMOND:** I do not think one can be confident that, every time a child is physically restrained, a parent is notified and there is an adequate review process in place.

**Reverend the Hon. FRED NILE:** In your opening remarks you referred to the need to train experts and go down the line. Shouldn't that training be done in teacher training colleges before teachers get into schools? Teachers should know how to deal with behaviour problems and special needs of students.

**Mr KINMOND:** We would support enhanced training at the teacher training level, but one of the other points that needs to be made is that, within the school context, some of the challenges that teachers are facing in terms of providing a positive behaviour support response are considerable. They do require people with years of experience and related skills and, therefore, we should not minimise the extent to which these challenges are beyond the demands of an ordinary schoolteacher—even a schoolteacher who has some experience in this area. Your learning and support officers, who are spread throughout the department, will not necessarily have the skills to deal with all behaviour issues that are in play. What we have argued is that the department ought to seek to enhance its own skill base in that regard but in addition on occasions it will need independent external inputs.

**The CHAIR:** In your opening statement you mentioned that it should be mandatory that principals have skills and qualifications in disability. Currently there are principals who do not necessarily have those qualifications. Is that correct?

**Mr KINMOND:** That is correct.

**The CHAIR:** I understand that maybe some of the other teachers do not, but the principals at the very least should have.

**Mr KINMOND:** Yes. You also have assistant principals, learning and support. You have learning and support teachers. You have psychologists working in the system. You have people who are in the wellbeing area in the education services team.

**The CHAIR:** Yes, but your recommendations are that the principals themselves be qualified as well.

**Mr KINMOND:** Yes. We are arguing that there ought to be mandatory training for principals and other executive officers but, in addition to that, we are making the point that simply because a person has a label attached to their position does not necessarily mean that they have the skill set. Systematically the department ought to be looking at how it can in an ongoing sense enhance the skill set of its generalist teachers and executive staff but also those who have specialist skills so that the exclusion, for example, of a child from mainstream schooling does not take place on the back of a failure to understand what might need to be done and the related expertise in terms of making that assessment.

**The CHAIR:** I have one more quick question: In your report, you observed there was a Special Commission of Inquiry into Child Protection Services in New South Wales in 2008 and made the point that it was disappointing to note the lack of progress in addressing these issues. Can you tell me more about the lack of progress?

**Mr KINMOND:** That was the special commission of inquiry into child protection carried out by Justice Wood. Justice Wood made a number of recommendations in relation to children in out-of-home care and the need for there to be much closer monitoring of the progress of those children in the education system and a much better working relationship between Family and Community Services and the department in that regard. As a part of this exercise we had a look at children in out-of-home care who were in residential care, and we essentially looked at about 60 per cent of the population of children who are in residential out-of-home care. The key finding was this: Of the children that we reviewed—which is about 60 per cent of the population—43 per cent of those children last calendar year missed 20 or more days of schooling for reasons other than illness.

**The CHAIR:** So it was not specified—

**Mr KINMOND:** That is 20 or more days of schooling in 2016 for 43 per cent of that population. The most significant thing about it is how many days over 20 days: On average, those children missed 88 days of school.

**The CHAIR:** Eighty-eight days?

**Mr KINMOND:** Eighty-eight days of school in 2016.

**Mr DAVID SHOEBRIDGE:** Half their schooling.

**The CHAIR:** And there is no reason explaining that?

**Reverend the Hon. FRED NILE:** What was the cause of that?

**Mr KINMOND:** If you look at the children—more than half of them had disability, 15 per cent of them had multiple disabilities, almost three-quarters of them had additional support needs, half of them were attending schools for special purposes, and almost 60 per cent were suspended in 2016. On average these children lost 29 days due to suspension—so suspension alone does not account for it—and for many of these children there were significant delays in them being enrolled within the school system.

**Reverend the Hon. FRED NILE:** Can you name the children with special needs?

**Mr KINMOND:** About 50 per cent were children with disability. There were a substantial number of children who did not have disability but as a result of their experiences no doubt faced trauma. That is substantial.

**The CHAIR:** What were the recommendations in the 2008 report?

**Mr KINMOND:** Justice Wood made it very clear that there needed to be line of sight over children in out-of-home care in their educational outcomes and that there needed to be strong working relationships between the Department of Family and Community Services and the Department of Education in relation to these kids. Can I also say when one talks about line of sight, the department could only identify 26 of the 229 children and young people recorded in its data system as being in out-of-home care.

**Mr DAVID SHOEBRIDGE:** When I read that figure I was astounded that the department did not even know that about 90 per cent of the kids enrolled were in out-of-home residential care. Did they have an explanation for that? When you look at the recommendations from the Wood royal commission that is the low-hanging fruit and they did not even know.

**Mr KINMOND:** Without the data you cannot really track how these kids generally are travelling through the system.

**Mr DAVID SHOEBRIDGE:** So how did the department explain that they only knew about one in 10 of the kids was in residential care?

**Mr KINMOND:** In another context, on a number of occasions the department has indicated to me that they have data capturing of about 5,000 children in out-of-home care, which represents a much higher percentage than the sample that we took, but the department did not challenge this figure in relation to the cohort that we are looking at—namely, children in out-of-care and residential care. One of the key things that one needs to ascertain is whether you are moving forward in practice. You would look at NAPLAN results, suspension records, expulsion records, non-attendance records, partial attendance records and the like, but if you have not got the data system telling you that these kids are in out-of-home care in the first place how do you actually track the performance and outcomes?

**The CHAIR:** Do you know if the department implemented any of the recommendations contained in the 2008 report?

**Mr KINMOND:** I do know that action was taken at various points in time. It is on the public record that announcements were made concerning various initiatives pertaining to children in out-of-home care.

**The CHAIR:** Announcements might have been made but were they implemented?

**Mr KINMOND:** That is a very good question. I think what it also illustrates again is that we have to maintain ongoing line of sight of these issues through our systems. From my perspective children receiving a decent education is one of the best strength-based things you can do. So it is unacceptable if we do not capture data in this area in a sophisticated way.

**The CHAIR:** It is a fundamental right for children to have the best possible education.

**Mr KINMOND:** Absolutely.

**Mr DAVID SHOEBRIDGE:** If on average they have missed half the school year, if you were going to mark our system for that you would give it a big "F" for fail. We have failed all of those kids.

**Mr KINMOND:** These kids are not getting a decent education.

**Mr DAVID SHOEBRIDGE:** If they are not going to school for half the year they are not getting an education, and when they do turn up they will be all at sea.



**Reverend the Hon. FRED NILE:** Is it possible to identify the schools? Do certain schools have very bad results and others have high levels of attendance or is it across the whole spectrum?

**Mr KINMOND:** That is the sort of work that could be done if one was then to do more detailed analysis. I absolutely agree with your point. This relates back to my earlier issue—data is pretty critical in this area from a governance point of view. We do need to have—whether it is children in out-of-home care, Aboriginal children or children with disability—a data-informed system so that we can make data-informed decisions as to whether or not we are moving forward.

**The Hon. GREG DONNELLY:** I refer you to page 88 of the report tabled in the Parliament yesterday. At point (2), under the heading "Department of Education", it begins "Public schools ..." but perhaps it is more broader than public schools. Obviously there is a capacity for a child entering primary school to carry information forward with them from preschool in the enrolment process that might help flag risk and also as they progress from primary to high school. Is much of that information being captured and carried forward from preschool, to primary school and then high school? Is it not happening at all or is it being done in an ad hoc way?

**Ms McKENZIE:** That is a very good question but we did not specifically look at the transition process. We certainly looked at the adequacy of the data systems for being able to identify students at risk and some of the elements that you would look at to identify students at risk. We did not look at the specific issue of how that information—

**The Hon. GREG DONNELLY:** What would be likely to happen in the first year of school to identify that a child could possibly be at risk? What goes on in a school—we will call it school A—that might be assessing a child's exposure to being at risk?

**Mr KINMOND:** There are the provisions of chapter 16A of the Children and Young Persons Care and Protection Act. One would expect if the child was attending an approved children's service that there would be communication between the approved children's service and the school and that that information would be exchanged. The work we have done in this area tends to be more at the broader systems level. Can I illustrate? We had a detailed look, for example, at two communities with significant Aboriginal populations. I have direct access into the police system so I looked at the police database. I also have direct access to the child protection system. We also obtained attendance data—our starting point was actually attendance data. So we had a look in these two communities at the children who were regularly missing school. We then crosschecked that with the police database.

Then we crosschecked it with children who had had 10 or more reports to the child protection system. From that we were about to then identify within those two communities—these were not large communities; a couple of thousand in them—that a little over 40 Aboriginal kids between the ages of eight to 12, the particular group we were looking at, who against one or more of those indicators there was evidence of very significant risk. The cross-cycle was very significant but that will not surprise anyone here today. Many of the children had extensive policing histories—for example, coming to the attention of police being on the street of a night, having child protection histories and substantial numbers of days of missed schooling days. So then we had a look at the extent to which there was any evidence whatsoever of the funded programs having an impact on the lives of either these children or their families. I think we found, from memory, in only 13 cases of these children or their families was there any evidence of any systematic, significant interagency work.

Our point there was you are spending a great deal of money in these communities but you are not tracking whether you are getting a return on investment. You are not even tracking whether those—who on any indicator—ought to be your highest risk children and families, are being provided with services. We would argue that the identification of children at risk—and more broadly the identification of data relating to suspension data, part-time attendance data, non-school attendance data, and we have referred to a number of other indicators—that should be something that is being systematically tracked and then that should inform decisions, rather than decisions being made on a whim. That should inform decisions about which children ought to be referred for systematic multi-agency work. As we have said in the report, there are a lot of multi-agency initiatives at play, but in this State in relation to vulnerable families we do not at this point in time have a clear evidence base concerning what works.

**The Hon. GREG DONNELLY:** To the extent that a child has over the course of their primary school years developed a profile of being at risk, when they leave primary school and enter high school does all that information just fall over a cliff? It does not carry on to the high school they are transferring to in some form?

**Mr KINMOND:** I think one could be reasonably confident that the department's own records would be transferred across where relevant. But of course, addressing the needs of very high risk kids is not a challenge

for the department alone. That challenge can only be met by a well calibrated interagency response. Once again, we make the point—we made a recommendation—that this need for a well calibrated multiagency response needs to be led at the most senior levels of the bureaucracy.

**The Hon. GREG DONNELLY:** I understand that. It seems amazing to me that that profile may have been developed but there is the potential that a child commences his or her first year in high school and it is like looking at a blank sheet of paper. All that knowledge of the child's circumstances built up over time would be informative and most helpful.

**Reverend the Hon. FRED NILE:** Is there a file on the child that would be transferred from the primary school to the high school?

**Mr KINMOND:** I think there would be. My background tends to be in this area in intelligence. When one looks at it from an intelligence perspective, having quite detailed running notes in relation to a child is one thing. The systematic identification of children who are most at risk and the ability then to run reports to identify those children is a slightly different issue.

**Mr DAVID SHOEBRIDGE:** Your point is different. The question is not that the file is not being provided; it is that the file has not been rigorously analysed so as to identify a child at risk and to bring in the other agencies. That is the bigger problem.

**Mr KINMOND:** I think that is right. Can we say as a State that with the billions of dollars we spend in relation to the provision of community services and in the education area, we have a system for systematically identifying those children who should be targeted for support. I used to oversight the police in the 1990s and I saw a fundamental change in the business of policing with the introduction of intelligence driven policing. When Justice Wood was conducting his special commission of inquiry I presented the idea of intelligence driven child protection—a principle that he endorsed. The concern that I have is if we have developed sophisticated practices for identifying criminals, which is a good thing, why have we not developed sophisticated practices using our data systems for identifying those who need support?

**The CHAIR:** You can get to the problem early.

**Mr DAVID SHOEBRIDGE:** When one talks to data experts, they say that between the different State government agencies there is probably enough information about a child, if you aggregated it to pull together when the child is five. With about a 90 per cent confidence measure you could predict their future if their basic circumstances remain the same. But we are not doing that.

**Mr KINMOND:** We do not have a sophisticated system for identifying children who are most at risk in this State. Let me withdraw my earlier comment.

**The Hon. NATASHA MACLAREN-JONES:** I am interested in the section in your submission on governance. It is quite concerning that you say a number of schools are not following basic compliance policies. How does that come about, that they can get away with not following the rules they are meant to follow? That is on page 7 in the introduction.

**Mr KINMOND:** We have noted, for example, in the non-government school sector in areas where one would expect detailed policies that there are policies that adequately reflect and refer to children with disabilities. We have noted that there is an absence of focus on those children where one would expect it.

**The Hon. NATASHA MACLAREN-JONES:** The policy exists; they are just not following it?

**Mr KINMOND:** Or it is not in the policy; there is not a specific reference to children with a disability and a recognition of the rights—a strong focus on children with a disability in respect of certain policies. It is an interesting issue, I suppose, for the NSW Education Standards Authority [NESA] to some extent—the former Board of Studies—to have a look at what might be done in this area. I am pleased to say that NESA has been provided with a copy of our report and it is keen to sit down with us to have a look at what it could do in this sphere. Obviously, any work that would need to be done in this sphere would need not just to involve the department but also to involve non-government schools.

**Reverend the Hon. FRED NILE:** Is it possible to assess which factors have the greatest impact on the classroom—the children in the classroom with special needs or the children with behavioural problems?

**Mr DAVID SHOEBRIDGE:** They are not two distinct pools.

**Ms McKENZIE:** No, and that is part of what we emphasised in the report—some of the complexity in a number of students, particularly the population that we had as the focus for this report; that is, students with

complex needs and challenging behaviour. In some cases there are complex intersections between disability and behaviour and in some cases between trauma and behaviour.

**Reverend the Hon. FRED NILE:** The child had both.

**Ms McKENZIE:** Yes, many. In the three cohorts of students at which we took a particular look, which were students with disabilities and additional needs, Aboriginal students, and students in residential out-of-home-care, there is significant overlap. We heard that really strongly from a whole range of schools. There is a significant overlap across all those areas.

**Reverend the Hon. FRED NILE:** When a teacher's hands are full with the problems of children with special needs and behavioural problems, what happens to the other children in the classroom who are well-behaved and who have no problems? Are they neglected?

**Ms McKENZIE:** That is one of the reasons that we took a look at this area. It is quite complex. The impact of the work that is done in relation to these students to try to prevent the behaviour but also to effectively respond to it is so important to the individual affected student but also to other students in the classroom and in the broader school. I think part of what really stood out in this report is that there is a lot that rests with teachers and there is a lot in the behaviour management space that teachers are expected to do, certainly in the disability space. When you look at what is expected in relation to disability services you see that the work that is done there in assessing what underlies the behaviour of the student and looking at factors like that. At times there is quite a complex intersection between disability and behaviour.

That work is done by people who have specialist skills in that space—behaviour clinicians and others. At the moment in schools a lot of that rests with teachers doing that work. What we have really emphasised in the report is that teachers need to be supported in that work by having access to people who have the relevant skills. In our view there needs to be increased rigour around the need to draw on expert advice, whether it rests within the school, within educational services still within the department, or it is external advice and expertise that is being sourced. In our view, there is more that can be done in that space before adverse action is taken against a student.

**Mr DAVID SHOEBRIDGE:** Your data shows that every year there are about 33,000 suspensions, both long and short, on the basis of either continued disobedience or persistent misbehaviour. The data moves slightly but the combined total number of suspensions is about 33,000 a year for that class of behaviour. Is that right?

**Ms McKENZIE:** Yes, that would be a combination of long and short suspensions.

**Mr DAVID SHOEBRIDGE:** Your report also says that there is no evidence at all that suspension improves misbehaviour, and, indeed, for kids with special needs and disabilities it is likely to aggravate the problem. How is it happening?

**Ms McKENZIE:** I think this is one of the areas where, certainly when we had a look at the department's guidance, their suspension and expulsion procedures, there are some really strong elements in that around what needs to be done prior to the student being suspended, but also if a student is suspended, the work that should be undertaken by a school during that process. So in some cases, and particularly where there are matters that relate to immediate risk to the student themselves or others, there may be a need to suspend. But there is core work that should be done by the school to review the situation and to look at what else needs to be put in place ahead of that student returning to the school to ensure that, or as much as possible, that does not recur. But that was part of the problem for us, and in terms of compliance with policy that is one of the areas in particular that does not consistently happen. But principals certainly shared with us that in some cases suspension is used to give teachers and other students a break from the behaviour. In one of the examples that we highlight in the report the principal advised us that they had suspended a student for swearing in order to give, again, the teacher and the students a break.

**The CHAIR:** You are right there. That is the main reason I have heard given from teachers and special aide teachers and so forth that it is to give the student a break and also to let the class settle down and give the teacher a break as well. They are the three factors of why they seem to use that methodology.

**Mr DAVID SHOEBRIDGE:** Well, if that is the case, by and large, to an appalling degree, the kids that the rest of the class is getting a break from are Aboriginal kids. Aboriginal kids make up one in four of these suspensions, sometimes more.

**Ms McKENZIE:** They are overrepresented.

**Mr KINMOND:** I think Aboriginal students, 7 per cent of the population are about the mid-twenties in terms of suspension numbers.

**Mr DAVID SHOEBRIDGE:** Aboriginal kids are being cleaned out of the classroom on sometimes quite long suspensions, and you cannot imagine a more obvious part of the problem for creating long-term structural disadvantage for these kids; they are not getting an education and the rest of their life prospects spiral downwards. How can the department justify, if they do, one in four of the kids being suspended are Aboriginal?

**Mr KINMOND:** The flipside is there are some very good things happening in many schools and, once again, if one then is capturing and analysing in a sophisticated way the data, you would see from that data, particularly if you run it against the profile of particular schools, where the data would indicate that things seem to be travelling well in terms of suspension and—

**Mr DAVID SHOEBRIDGE:** You point out Connected Communities. That seems really good, terrific, wonderful, but it is, like, in 15 schools, and even though that has been around since 2011 and it is only in 15 schools, we have got this crisis of one-quarter of the suspensions being Aboriginal kids. Is part of the answer making mandatory Connected Communities wherever we have a significant Aboriginal population?

**The CHAIR:** That is a good question; it is a good point.

**Mr KINMOND:** Connected Communities is a very important initiative. We would also say, and we point it out in this report, the network specialist centres where the role of those facilitators is to provide a coordinated response to children with significant needs, and that, of course, going back to my earlier comments, should involve systematically identifying those children. But I also go back to my earlier points that I made concerning interagency practice. It is one thing giving somebody the responsibility for providing a tailored multiagency response to the children, it another thing setting up the system to facilitate that process, and that is not something which can be achieved by education alone. It would be naive to think that that is the case.

It is the same with Connected Communities, that the core of Connected Communities is to provide an integrated place-based response to those children who need it. But, of course, that integrated place-based response cannot be delivered by the Department of Education alone; it requires FACS, it requires Health, it requires Justice to be at the table. We would argue yet again that in order to provide a coordinated multiagency response, driven too by a solid intel system, this ought to be an issue that is identified by the secretaries as a priority issue so that we start to get some real outcomes in terms of vulnerable kids.

**The Hon. TAYLOR MARTIN:** You mentioned that there are some good initiatives with some good outcomes, and of course we will hear about when things are not going so well. Do you have any more examples? I know Mr Shoebridge nominated one. Do you have any other examples of initiatives working well we might not hear so much about?

**Ms McKENZIE:** In interagency work, no, I do not know that we did—

**Mr KINMOND:** In the schools though that we looked at.

**Ms McKENZIE:** Sorry. We definitely came across some really positive practice on the part of individual schools, and we have highlighted those in the report. So there is a lot of work by individual schools. On the issue that was raised earlier around identifying students that are at risk, there is some really practice that is done by a number of the schools that we went and visited and spent some time with—some really concrete work that some of the high schools do with the primary schools to meet with students at an early point to do some intensive work to assess their needs and, in some cases in some of the more specialised schools, as much as possible to match students to the teachers that they have on staff.

We saw a positive practice across both mainstream schools and also some of the more specialist settings. We went to a range of learning centres, also known as behaviour schools, and saw some really positive practice that is delivered in some of those more specialist settings where there are smaller class sizes and a more intensive approach and where there is a really strong emphasis on social skills and things like emotional regulation, some of those important skills that a number of these students need, and other more recent initiatives where, for example, one school is investing heavily in mindfulness to the extent that they are developing a room that is a mindfulness room in the school that is being built, and they reported to us that they are seeing significant positive outcomes for the students that they are supporting.

So there is a range of really positive initiatives in individual schools. Part of what we have drawn on here in the section where we talk about access to expertise, what we have emphasised is that there is a range of really positive initiatives that happen across a whole range of schools and a range of teachers and others with quite strong skills in different areas, whether it is behaviour support, disability or a number of particular areas.

But the knowledge of where that expertise sits and that kind of cross-fertilisation and access to that information does not happen particularly well.

**Mr DAVID SHOEBRIDGE:** And good practice has not been disseminated.

**Ms McKENZIE:** Well, it is heavily reliant, I think, on particular individuals at the moment to disseminate that—so some of the people in director positions—to be able to disseminate some of that information.

**The Hon. TAYLOR MARTIN:** That is my follow-up question. Have any of those individual initiatives from those individual schools identified further development?

**Ms McKENZIE:** What was shared with us is that positive practice in different areas is shared in different ways. There are, for example, principal groups that meet and share ideas about what is happening. What we saw though is there is a need to identify on a more systematic basis where there is positive practice. One of the areas that we pointed to was around the use of the resource allocation model [RAM] funds. Some principals are using those funds in really creative ways to better support and meet the learning and support needs of the students, where other principals were saying to us, "There is no way for us to access the expertise in another school," for example. Other principals were openly saying, "This is how we are using the funds to do exactly that."

**The CHAIR:** If you could categorise all the positive outcomes from each school and put them all together, you would have a good system. Is it possible to put all that together?

**Mr KINMOND:** I think that once again the systematic capture and promotion of good practice would be an excellent thing to do—quite frankly, a regular award being provided and promoting publicly and heralding the excellent work that is being done by many educators.

**Mr DAVID SHOEBRIDGE:** A 10 per cent increase in your RAM funding—that would get them excited.

**Mr KINMOND:** There are some real possibilities there. I support my colleague's comments. There is some excellent work which is being done. We get told regularly, "Well, there is some good interagency work being done." Ms McKenzie has outlined a number of initiatives. The question for me is: To what extent are we systematically capturing that? To what extent are we celebrating it? To what extent are we, in a planned way, ensuring that there is skill and knowledge transfer so that over time we can be confident that we see substantial improvements in practice?

**Reverend the Hon. FRED NILE:** Did you have the opportunity to examine the Arrowsmith School or program?

**Ms McKENZIE:** No, we did not.

**Mr DAVID SHOEBRIDGE:** That is for another day, Fred.

**Reverend the Hon. FRED NILE:** Their value in the special needs area—are you aware of it?

**Ms McKENZIE:** We have definitely seen it come up through this inquiry—it has come through quite strongly—but we did not look at that.

**Mr DAVID SHOEBRIDGE:** Talking about RAM funding, there may well be great practice in school A or school B or a whole bunch of schools, but there is almost no public reporting on how that funding is used. We have had many parents deeply frustrated, saying that there is funding meant to be allocated on the basis of their child having special needs but none of it is actually finding its way to the coalface. Your recommendation suggests some transparency on RAM funding. Can you explain how that would work?

**Ms McKENZIE:** What we saw is that the annual reports that schools are doing pick up, to some extent, the use of some of the RAM funds.

**Mr DAVID SHOEBRIDGE:** I have read a bunch and I cannot work out how much has been spent on anything.

**Ms McKENZIE:** For us the part that stood out is that the more specific funding—the integration funding and funding support where it is against particular students; it is used more broadly, but it is against identified students—is not publicly reported. The report picks up that we had initially proposed that there be public reporting on it as part of the annual school plan reports on the use of those funds. The department has indicated that would not be appropriate to do it via that mechanism so our proposal has been we see that there is a need for greater accountability and parents and other members of the school community want to know how

those funds are being used and that the department needs to identify a way that it can provide greater accountability as to how those funds are used.

**Mr DAVID SHOEBRIDGE:** Did they explain why the most obvious solution, which is putting it in the school's annual report, would not work?

**Mr KINMOND:** The argument may well be that that allows children to be identified and specific initiatives pertaining to children to be identified. I note that point. I have not done an analysis of each and every student. There is 6.5 per cent of kids who are identified as having a disability. There is a question in my mind as to whether there would be a downside risk of that type. In any event, there is a large amount of money being applied to this funding stream and we would be very keen to see the department have a system whereby it can in concrete terms specify more clearly how the funds are being spent and the outcomes that are being achieved.

**The Hon. GREG DONNELLY:** In the report on pages 21 to 23—and this most recent discussion about the RAM funding has perhaps dealt with this—is your outside expertise to provide some potential additional momentum for dealing with children in these circumstances? Could you elucidate a little on where that expertise can be sourced and how readily available it is? Or is there a difficulty that there really is not a lot of expertise and essentially you have to rely on what is there domiciled within the Department of Education and work with that?

**Ms McKENZIE:** There is definitely expertise that sits within the department, so it does have some expertise but the sufficiency of that expertise across all of the schools that need it is not currently there. Certainly what we heard quite strongly and pretty consistently from schools, principals and others is that a range of the positions that are identified as being the specialist advisers—the positions that teachers and others would go to, to draw on and to gain expertise—actually do not have the skill sets that are needed. As I alluded to earlier, and given that we were looking at students with complex needs and challenging behaviour, some of the skills that are needed in that space and looking at the intersection between disability and behaviour are not common skills. They would not be common skills amongst teachers.

What we have identified is that there is a greater need to identify those within the department that already have the necessary skills—to better flag those so that that resource is known across schools and able to be drawn on. There is also a need for those that are in the specialist adviser positions to be adequately trained up to ensure that they are able to provide the necessary support. One area in particular that we focus on in the report is around conducting functional behaviour assessments, particularly for those students where the broader positive approach to behaviour support and the more generalist strategies have not worked and there is a need for more intensive work and close examination of what underpins the behaviour—in some cases, multiple factors or multiple causes for the behaviour.

It is about doing that work to draw on information across a range of sources to get a good understanding about the likely reasons for the behaviour and then developing evidence-based strategies for seeking to address them. At the moment we do not see that happening across the board in schools. It particularly stood out to us that that does not appear to be the case even where there is adverse action being taken against students—where there are suspensions, in some cases multiple suspensions, happening; where there are students being placed on part day attendance, where they can only come for a couple of hours per day; where there are discussions with families about the student moving to distance education rather than continuing to be education in school. Even in those scenarios we do not see as a matter of course this kind of fundamental work looking at what underpins the behaviour and having adequate expertise brought to bear to look at that scenario and ask, "What else could actually be done to better support that student within the school environment?" before looking at the adverse action.

**Mr KINMOND:** And there is certainly a significant number of experts external to the school environment—behaviour clinicians and a range of experts. So in response to whether there is the available expertise, yes, there are people who are highly skilled who could be brought in.

**The Hon. GREG DONNELLY:** Yes. Can I also say that fairness not only needs to be done but also needs to be seen to be done.

**The CHAIR:** Absolutely.

**Mr KINMOND:** And in this context sometimes you will you have a situation where the relationship between the school and the parent will break down. Sometimes that can happen very quickly and it can be critical then to bring in an external pair of eyes to have a look at the situation, particularly someone with the requisite skills, to put an independent perspective on things. We have seen quite a number of matters where there has been a terrible breakdown in the relationship and to some extent the needs of the child then sit on the sideline while a dispute plays out.

**Mr DAVID SHOEBRIDGE:** You say that is often in relation to a matter that, with cooler heads, could have been or should have been readily resolved early on?

**Ms McKENZIE:** Yes, straightforward.

**Mr KINMOND:** I think so. So whether it is complaints, particular reportable conduct matters or concerns that a parent has that their child is not receiving adjustments, there needs to be a recognition that on occasions an independent set of eyes is the way to go.

**The CHAIR:** Thank you very much. I am sorry that I have to draw the hearing to a close. I thank both of you for attending today. I look forward to reading your report in closer detail but I am impressed—I am sure the other Committee committees are also—and I hope we arrive at some good outcomes. The secretariat will contact you about the questions you have taken on notice or any supplementary questions the Committee may have. The Committee has resolved that answers to these questions be returned within 21 days. Again thank you both so much for attending today's hearing.

**(The witnesses withdrew)**

**(The Committee adjourned at 15:11)**