**Submission to the Senate Education and Employment Reference Committees**

Current Levels of Access and Attainment for Students with Disability in the School System, and the Impact on Students and Families Associated with Inadequate Levels of Support

**29 August 2015**

**Contact:**

**Julie Phillips**

**Disability Advocate**

**PO Box 412, Fairfield VIC 3078**

**Ph/Fax: 9481-0999**

**Email: email2jphillips@yahoo.com.au**

**Mobile: 0417 570 197**

**Index**

**Introduction** ………………………………………………………………………….3

1. **Speech Pathology/Language Support** …………………………..5

**Students with Language Disorders**……………………………………… 5

**Cuts in Funding for Students with Language Disorders**…………….. 6

**The approach of special schools to speech pathology**……………….8

1. **FUNDING FOR STUDENTS WITH DISABILITIES**………………………….11

**C. Individual Education Plans/student support groups**…….14

**D. Psychology/Behaviour Support FOR CHILDREN WITH**

**DISABILITIES IN VICTORIAN SCHOOLS** ……………………………….. 18

**The effect of restrictive practices on educational achievement** ……… 18

**Seclusion**…………………………………………………………………………20

**Examples of Seclusion used by DET**………………………………………. 22

**Restraint**………………………………………………………………………….25

**Examples of restraint used by DET**………………………………….......... 29

**The result of the refusal by DET to use evidence-based**

**psychological behaviour interventions to respond to challenging**

**behaviours**…………………………………………………………………….. 31

I**njury and death as a result of restraint and seclusion** …………………31

**Positive Behaviour Support**………………………………………………… 32

**Examples of behaviour plans**………………………………………….. ….. 36

**Functional Behaviour Assessment**………………………………………… 39

**Rejection by DET of evidence-based practice**…………………………… 41

**E. SUSPENSIONS/EXPULSIONS**……………………………………………….. 43

**F. DISABILITY Discrimination Act**……………………………………….... 43

**G . Bullying**………………………………………………………………………..43

**H. School Buses**………………………………………………………………..45

**I. Complaint Processes** ………………………………………………….. 46

**J. BEST practice/evidence-based teaching approaches** …….50

**K. impact**………………………………………………………………………….. 51

**Recommendations**…………………………………………………………….. 53

**ATTACHMENTS**……………………………………………………………………..54

**ABBREVIATIONS**………………………………………………………………….. 55

I**ntroduction/Summary**

I write as a Disability Advocate who has been working in the disability sector since 1990. Since 2000 I have been assisting people with disabilities through general advocacy, by assisting them to make complaints of discrimination, and supporting law firms who require assistance to work effectively in this area.

I have assisted parents in the making of approximately 40 legal complaints of disability discrimination against the Victorian Department of Education and Training ("DET"). Most of these have settled. In terms of non-legal complaints in relation to education, the number of complaints would be in the hundreds.

My history includes working for disability service providers at a grassroots and senior management level, and involvement on numerous Boards in the disability sector, current today. The majority of my work is voluntary.

In the last 10 years, 80% of the clients who approach me for assistance, do so with concerns about the education and treatment of children and young people with disabilities in schools.

I would estimate that since 2006 I have been approached by several hundred parents and been provided with thousands of documents relating to their family members and their school experiences.

It was only in July this year that newly appointed DET Secretary of DET, Ms Gill Callister made a commitment to appoint an "independent expert" to lead a wide ranging review into DET in the wake of ongoing corruption enquiries. It should be recognised that this will take a significant length of time, and in the meantime many of the same senior personnel remain.

However of greater concern is the letter dated 27 July 2015 Ms Callister provided to the Senate Community Affairs Reference Committee in response to submissions made regarding the abuse of students with disabilities in schools, which can be found on <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Submissions>.

Much of the information that Ms Callister provided the Senate Committee was misleading, as can be indicated in various sections of this submission.

I provide the personal information below either as a result of it being public information, and/or with the permission of the families involved.

There are two integral aspects of school life that we should expect children to be able to access. One is academic achievement, and the other is socialisation. Underpinning both of these is the right to a safe and nurturing environment.

When children are being traumatised by their very attendance at school, they cannot learn. Therefore the recent Senate Inquiry into Violence Abuse and Neglect of People with Disabilities in Institutions should be seen as a companion inquiry in relation to reports of abuse against children with disabilities in schools.

The right to an education should not need to be fought for by parents. Parents should not need to take legal action against government to obtain speech pathology, have meaningful educational plans, for the right to attend school full time, or to go on a camp.

There is something very wrong about a government department responsible for the education of vulnerable and marginalised Australians, that forces parents to fight to the point of exhaustion to obtain something which is a right - an education for their child.

On behalf of the parents that I have had the honour of working with in the last 10 years, I encourage the Senate to do whatever it can with the information it receives to improve the lives of all Australians with a disability - by making whatever changes are required to ensure that they can access an education, and by doing so, have the same levels of participation in Australian society that others do.

1. **Speech Pathology/Language Support**

**Students with Language Disorders**

1. For the purposes of this paper, individuals described as having language impairments/language disorders/language difficulties will all be referred to as having "language disorders".
2. In 2012, the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC") found that “*Despite considerable investment by the Victorian Government, there continues to be significant unmet need for support services for students with disabilities, including integration aides, occupational therapists, speech therapists, other specialist staff and assistive technology. If these are not provided when required, students with disabilities cannot participate effectively in education*". [[1]](#footnote-1)
3. Since 2012, there has been no discerning change in the manner by which DET approach the goal of ensuring that students with disabilities can actually communicate.
4. It is self-evident that to become educated, one needs to be able to expressively and receptively communicate. A student must understand what is being presented to them orally, if that is the manner in which the information is being provided. A student must be able to ask questions if they don't understand what is happening in the classroom or what they are being taught.
5. It is important to consider the number of students in schools who have language disorders and how they are supported.
6. In 2005, the number of students eligible for the Severe Language Disorder criteria under the Program for Students with Disabilities in Victorian schools was 6760[[2]](#footnote-2). The criteria required that the language disorder not be accounted for by intellectual disability, hearing impairment or social emotional factors, and required a 2 standard deviations from the mean score [[3]](#footnote-3). Students with Autism Spectrum Disorder and an associated language disorder 2 standard deviations from the mean, were eligible for funding under the Autism Spectrum Disorder criteria.[[4]](#footnote-4)
7. Therefore in 2005, there were 6760 students who met the contrived DET Severe Language Disorder category. This number did not include any student having a language disorder:

* less than two standard deviations from the mean;
* due to intellectual disability;
* due to hearing loss/deafness;
* due to social emotional factors; and
* due to Autism Spectrum Disorder.

1. In its submission to the VEOHRC “Held Back” Report[[5]](#footnote-5), Speech Pathology Australia is quoted as stating that communication disorders affect as many as 13% of Australian children.
2. In Victoria, the manner in which students with disabilities receive individual funding is through the Program for Students with Disabilities which despite requiring in its application processes the filling out of an Educational Needs Questionnaire, only allows entry based on disability[[6]](#footnote-6) or limitation, rather than the actual educational needs of an individual student.
3. The "Held Back" Report states in relation to Speech Pathology Australia:

*The organisation made the strong case that students with severe speech and/or language disorders can access the curriculum if best practice teaching strategies and support in the classroom is applied and speech pathology services are provided. It reported it had repeatedly expressed concern to the DEECD that access to speech pathology services in the Victorian school system is at the discretion of the school principal, resulting in ‘significant inequity’ in service provision across the state.[[7]](#footnote-7) They also submitted that the absence of specific guidelines and role descriptions for student support officers leads to individual therapists having to advocate for services for students to school principals, where speech pathology services are either not available or funds are used elsewhere, for example for an integration aide.[[8]](#footnote-8)*

**Cuts in Funding for Students with Language Disorders**

1. The history of how DET has dealt with the needs of students with language disorders represents yet another shameful reflection on DET and its inability to divorce itself of accusations of corruption[[9]](#footnote-9).
2. The actions of DET in response to an increase in students with language disorders qualifying for Program for Students with Disabilities funding of between 15% and 24% each year, is set out in the decision of *Turner v State of Victoria* paragraphs 524-544.
3. A Working Panel was established by DET employees Mr Ian Claridge and Mr Geoff Riley. The Executive Director of the Royal Children's Hospital Educational Institute, Ms Margaret Robertson, was a member of the Working Panel. Ms Robertson was an ex employee of DET in the Disability Services Department. The Royal Children's Hospital Educational Institute is dependent on DET for its funding.[[10]](#footnote-10)
4. A decision was made by the Working Panel, without consensus, and without the endorsement of the member of the Working Panel most qualified to comment (an eminent Speech Pathologist), to lift the criteria of the Severe Language Disorder Category to 3 standard deviations from the mean. This was done on the basis of a report written by Ms Robertson of three pages, one of those pages being a table of criteria. Ms Robertson, ex-employee of DET and then Executive Director of an organisation funded by DET, was supported by then current DET employees in her recommendation. Therefore the decision made to lift the criteria occurred without any reference to Speech Pathology Australia, and without any reference to the Speech Pathologist on the Working Panel. VCAT Deputy Pres McKenzie euphemistically summed up the impropriety this way:

*I find that the process by which the changes in the eligibility criteria in the language disorder category of the PSD occurred was in many respects unsatisfactory. I find that the proposals which came out of that process lacked clear and substantial supporting evidence, and a strong rational basis. The evidence points to funding factors in relation to the PSD as being one of the major concerns which led to the changes. I find that the new criteria are difficult to apply, because they confuse two quite different stages of the PSD process. The formula used to calculate funding levels under the PSD, while ensuring that those with like levels of disability are treated in a like way, is based on the way in which students with disabilities were funded in 1994. There appears to have been no consideration as to whether this initial funding was or remains adequate or appropriate.[[11]](#footnote-11)*

1. The current criteria for students with language disorders to receive individual funding through the Program for Students with Disabilities through the Severe Language Disorder category, being in part, a language disorder 3 standard deviations from the mean or greater, is recognised nowhere in Australia or internationally as the determinant of severe language disorder. On the most conservative view, it is 2 standard deviations from the mean.[[12]](#footnote-12) In addition, a student attempting to meet the DET criteria is required to prove they have a "Critical Educational Need" in addition to the three standard deviation language disorder. Unfortunately, DET fails to give a definition of what this phrase actually means.
2. The thousands of students who lost their individual funding after the contrived change to the criteria, were offered access to the Language Support Program. This is a "train the trainer" type program which is entirely voluntary and concerns itself only with resourcing teachers to assist in oral language competency in children[[13]](#footnote-13). Children with types of language disorders not involving a deficit in oral language competency, (should their teacher decide to avail themselves of the resources of the Language Support Program), are unassisted.
3. Therefore the current situation for students in Victoria with clinically severe, moderate and mild language disorders is dire. With no access to individual funding, they are only provided with assistance that their parents may fund, which is against DET policy.
4. By restricting access to individual funding, DET managed to keep the numbers of students with language disorders qualifying for funding in Victoria to between 230-290 between 2008 and 2011[[14]](#footnote-14)

**The approach of special schools to speech pathology**

1. Special schools create an impression that they are better able to provide support to students with disabilities due to the fact that many of them have their own Allied health professionals attached to the school, including Speech Pathologists.
2. Special schools go about attempting to meet the needs of students with disabilities by teaching them as a group in the main, rather than individually. Similarly, any individual funding a child brings to the school, is pooled rather than allocated to the individual.
3. The disadvantages of this approach, and indeed the ineffectiveness of it, are showcased at Marnebek School ("Marnebek") in Victoria.
   * Marnebek do not believe that formal language/communication assessments are necessary for children who have severe language disorders and need those disorders addressed.
   * Marnebek do not believe that formal language/communication plans/programs are necessary (see **Attachment 1** as an example of a language/communication plan for a child with a severe language disorder at Marnebek written by their Speech Pathologist, Sarah Gracie).
   * Marnebek do not require any consistency in language/communication programs between home and school.
   * Marnebek do not believe that it is necessary for a parent to have any direct contact with the Speech Pathologist to discuss any speech pathology approach.
   * Marnebek make decisions about the method of communication to be used by a child according to which method is adopted by the school as a whole, rather than what the child with a language disorder requires as an individual. For example Marnebek claim to use PECS as a whole class approach.
   * As at 2014, no evidence could be demonstrated by Marnebek that they actually used PECS as a formal communication system, rather, they use Compic cards without any evidence of a formal program.
   * Marnebek do not believe it necessary for students to have a formal communication system used in the classroom.
4. A recent education case at VCAT involving Marnebek School confirmed the information above.

|  |
| --- |
| Case Study 1  John had a Severe Language Disorder as part of his Autism Spectrum Disorder and attended Marnebek from 2010 to mid-2012.  He had no formal language or speech assessment for the entirety of his enrolment.  He had no individually reported on formal language/communication plan in 2010.  He had no formal language/communication plan in 2011.  He had a language/communication plan in 2012 consisting of one sentence.  "PECS" was chosen as his method of communication without the permission of his parents.  The "PECS program" was only practised at morning tea and lunch times, with other children.  No individualised PECS book was provided in 2011 until September.  No formal assessment was undertaken because it "wasn't appropriate" in the view of the Speech Pathologist.  No formal vocabulary goals were identified.  No formal data collection occurred in the classroom.  No goals for verbal articulation were developed, despite a request from the parent.  **2009**  Prior to enrolment at Marnebek, John can say "open", "bus", "hip, hip, hooray", "Arko’s turn", "bye Liz" independently according to his early intervention placement records.  **2010**  At the end of Semester One 2010, it is reported that "xxx's speech is gradually becoming more clear and words that were incomprehensible at the beginning of the term are now resembling words, such as Sensory Garden and the Sensory Room”  Student School Report Semester Two records John can produce up to 5-6 word sentences. His clarity of speech has improved and it is much easier to understand what he is saying/requesting. This is providing John with a sense of achievement and pride that he is able to indicate his wants/needs clearly. His aide states that John "*could verbally tell us what he wanted*."  **2011**  In February 2011John is able to use 5-6 word sentences to communicate with his peers according to his Individual Learning Plan Semester One.  In June 2011 John's goal is to use 3-4 word sentences, being **less than** his entry skills at the beginning of the year as set out in his Report on Individual Learning Plan at the end of Semester One. John knows his name, age and brother’s names as recorded by his Paediatric Neurologist.  In December 2011, while previously John could use 5-6 word sentences, at the end of 2011, on occasion, John can use only one word utterances. John's vocabulary contains only a few words. John's speech is highly unintelligible according to the speech pathology report on his expressive language skills.  **2012**  In February 2012 John could not say the names of his teacher and aide as observed by his private psychologist at school.  In March 2012 observations by the private psychologist of John at Marnebek included:   * Some of the conversations the teacher was having with the class were above John’s level of understanding. * John was not using PECS proactively and did not understand the concept of "same" and "different". * John has included on his Marnebek Learning Intentions Sheet a goal to say his name, age and siblings, skills he had previously learned in Term 2, 2011.   John's mother withdrew him in 2012 and enrolled him in a mainstream school in 2013. His vocabulary increases month-to-month as formal goal setting, planning, monitoring and evaluation of progress takes place. |

|  |
| --- |
| Case Study 2  "Jane" was diagnosed with a Severe Language Disorder in Year 6. Despite the diagnosis, the DET Speech Pathologist did not recommend any speech pathology program of treatment, and Jane never received any support from a Speech Pathologist to ensure that her language disorder did not create barriers for learning for the entirety of her education.  Jane has no functional literacy and numeracy skills and went immediately from high school to being in receipt of a government benefit. |

1. Expressive, Receptive and Pragmatic Language Disorders interfere with the acquisition of academic skills. Until speech pathology services are provided in schools with no limitations to those who need them, students with language disorders will continue to be unable to access their education.

**B. FUNDING FOR STUDENTS WITH DISABILITIES**

1. The Program for Students with Disabilities ("PSD") is the mechanism by which schools receive individual funding for students with disabilities. It is important to note that while parents may pay hundreds of dollars to obtain reports for their children in the hope that they will be eligible for the PSD, if they are eligible, parents and students have no say in what that money will be used for, and do not even have the right to be told what it will be used for.
2. However one thing that schools and families of students with disabilities can no doubt agree upon, is that without additional individual funding, schools are poorly placed to provide some of the supports that students with disabilities might need.
3. One only has to read regular reports in the media to be informed that schools often have difficulty meeting the cost of basic maintenance requirements. Therefore the cost of an Integration Aide (putting aside the question of whether they add value), which may be approximately $45,000 per annum, is something that is not going to be able to be provided without specific funding allocated to the school.
4. The successful inclusion of students with disabilities does not always require the allocation of funds, however there are many supports of students with disabilities that do require resourcing. An example might be a child with complex communication needs. Funding may be required for:
   1. a communication device;
   2. training on the device for staff;
   3. the wages of a Communication Support Worker allocated to the child in order that they have the opportunity to communicate at all times, as children without disabilities in the classroom do;
   4. the wages of a Speech Pathologist expert in Augmentative and Alternative Communication to develop and supervise a language/communication plan.
5. Currently, the PSD has criteria which are arbitrary and discriminatory. DET attempt to lend themselves credibility by stating in their guidelines "*The eligibility criteria were developed from guidelines set by the World Health Organisation*."[[15]](#footnote-15) They have repeated this claim in previous years. The claim is a deception. The World Health Organisation does not have disability eligibility criteria. When challenged about continuing to present this false information in its documentation, DET have then claimed that somehow the eligibility criteria are linked to the International Classification of Diseases. This is also a deception.
6. The best example is DET’s fabricated criteria for the Severe Language Disorder, which as mentioned above has no relationship to the clinical definition of a Severe Language Disorder.
7. Putting aside the fact that the Victorian Government publishes such misleading information to the public year after year, it is clear that unless the student has a specific disability, and often a specific level of that disability within the criteria, they will not receive funding through the PSD. The categories are as follows:
   1. Physical Disability.

Within this category, one has to prove one has a "significant" physical disability or health impairment AND requires regular paramedical support. No such definition is contained within the International Classification of Diseases. Therefore only some children with physical disabilities will be able to apply. There is no definition of the term "significant".

* 1. Visual Impairment.

The definition sets out the visual acuity and visual fields requirements.

* 1. Hearing Impairment.

The definition sets out what type of hearing loss is required.

* 1. Severe Behaviour Disorder

Again, no such disability exists in the International Classification of Diseases. One has to meet four different requirements to meet this criteria, including displaying behaviour "*so deviant and with such frequency and severity that they require regular psychological or psychiatric treatment*."

This category is used to apply for children who have missed out on other categories, and as a result of neglect or incompetent handling, develop challenging behaviours in the school setting - in other words they often acquire additional ‘disabilities’ in addition to their first diagnosed disability due to their involvement in the education system.

* 1. Intellectual Disability
  2. Autism Spectrum Disorder

This category reflects no definition in the International Classification of Diseases, as it is not enough simply to have a diagnosis of Autism Spectrum Disorder to qualify for the PSD, one has to have a language disorder of two standard deviations or more below the mean. This was added to the criteria in 2009 in order to reduce the number of students with Autism Spectrum Disorder becoming eligible for funding. Therefore students who have a diagnosis of Autism Spectrum Disorder will only qualify if they have a severe language disorder in addition.

* 1. Severe Language Disorder with Critical Educational Needs

See section above on "The Reduction of Funding to Students with Language Disorders" under the heading "Students with Language Disorders".

The definition of "Critical Educational Needs" continues to be left undefined, however so few students meet the threshold of a language disorder three standard deviations from the mean the point is largely moot.

1. As DET makes clear, the PSD "…*provides resources to schools for a defined population of students with disabilities, with moderate to severe needs[[16]](#footnote-16).*" Read carefully, this accurately describes the PSD. It does not provide resources for students with disabilities with moderate to severe needs. It provides resources "*for a defined population of students with disabilities*" with moderate to severe needs.
2. A student's needs are actually never measured or taken into account. Firstly, if one does not meet the seven criteria, no matter how critical a student's educational needs are, they will not be eligible for individual funding. Secondly, within the PSD application process, to determine the actual amount of the funding, is what is referred to as an "Educational Needs Questionnaire". Ironically, this questionnaire does not measure educational need, but again, disability.
3. Those filling out the questionnaire are asked to rate what deficits the student has, what they cannot do or what they have difficulty doing[[17]](#footnote-17). The reason for avoiding ascertaining individual need is easily divined, as it is not difficult to envisage how much the PSD budget would need to be expanded if an effort was made to find out what students with disabilities actually needed to access their education and what resources were needed to facilitate this, as opposed to how severe their disability and impediments are.
4. The writer submits that the failure by Departments of Education across Australia to resource principals and teachers to properly support students with disabilities according to their individual needs is a significant barrier to the inclusion of students with disabilities and their academic success.
5. Until Departments of Education view students with disabilities as worthy of supporting, rather than attempting to regularly reduce the ability of students to qualify for funding, their current educational difficulties will remain.
6. There is currently a review of the Program for Students with Disabilities due to the fact that the Australian Labor Party made a commitment prior to the November 2014 election that it would undertake that review. The writer has attended one of the consultations, and was concerned that the issue of cost neutrality was raised repeatedly. It can be inferred that budgetary considerations will continue to be prioritised over access to education for students with disabilities.

**C. Individual Education Plans/Student Support Groups**

1. Individual Education Plans (otherwise referred to as Individual Learning Plans) and Student Support Groups have been singled out by VEOHRC in the following way:

Student Support Groups

"*These work well in many schools, however, frequency, quality and results of these meetings are inconsistent, despite such groups being mandated under the Program Students with Disabilities Guidelines*."

Individual Learning Plans

"*The development, quality and monitoring of these plans is inconsistent and there is no systemic monitoring to ensure these plans are of a reasonable quality and are being implemented*." [[18]](#footnote-18)

1. VAGO makes the following comments:

*"Schools are not implementing effective Student Support Groups (SSGs) or*

*developing consistent, high-quality Individual Learning Plans (ILPs)."*

1. Since 2012 and the comments made above, these criticisms have not been addressed. More disturbingly, on multiple occasions, DET has confirmed that their policies and guidelines around Individual Education Plans and Student Support Groups do not need to be followed by their own staff.
2. At any time when a parent or advocate attempts to call DET to account in relation to any guideline and its content, such content is quickly disowned. An example of a number of DET guidelines being jettisoned can be found in just one letter from Peter Greenwell to a parent attempting to hold DET accountable.[[19]](#footnote-19)
   1. In relation to the alleged value of parents, the Student Support Group Guidelines state (and have stated in the past), this:

*Parent/guardian/carer(s) play a* ***vital*** *role in the Student Support Group. They have a holistic understanding of the child and provide ongoing involvement in their education.* ***Parent/guardian/ carer(s) are often in the best position to provide information on the effectiveness and practicality of particular strategies and programs****. They provide knowledge and experience of previous events that may influence programming decisions. Parent/guardian/carer(s) are able to contribute to the goals and strategies that will support the education of their child, including their transition to further education, training and employment.*

When a parent made a complaint about Monash SDS whose Principal unilaterally and deliberately altered the time of Student Support Group meetings to a time they knew that the parent could not attend, Mr Greenwell said this:

*"While it is* ***preferable*** *for parents to be in attendance at all SSG meetings because they can contribute valuable knowledge of the student, where a parent does not or cannot attend SSGs there are other ways that parents can be consulted about adjustments and planning for the educational and social needs of the child. I understand that minutes of SSG meetings were forwarded to you for your input and feedback."*

So while the Student Support Group Guidelines stressed that a parent’s role is "vital", suddenly, when called to account, the parent’s attendance at the Student Support Group is simply "preferable" and the fact that the Principal changed the times of the meeting, knowing that the parent could not attend (ever again), is absolutely acceptable.

* 1. In relation to Individual Education Plans, the same parent brought to the attention of Mr Greenwell that there were no strategies in the plan, a vital component one would have thought. Particularly as Student Support Group Guidelines state:

*To maximise opportunities for students with disabilities to succeed, policy and practice within schools should reflect:*

* *collaboration between teachers and students, parent/guardian/carer(s), education and health professionals to develop agreed understandings and responses to a student’s behaviours, needs, communication skills and learning needs*
* *curriculum-based Personalised Learning and Support Planning informed by a Student Support Group that set out the student’s short-term and long-term learning goals based on the Australian Curriculum in Victoria (AusVELS), Abilities Based Learning and Education Support (ABLES) assessments and other relevant information*
* ***teaching and learning strategies*** *that take account of a student’s background, experiences, individual personality and individual goals[[20]](#footnote-20)* [emphasis added]

Mr Greenwell had this to say:

*The Department's guidelines are* ***guidelines*** *for use and adaptation by educational settings. At Monash SDS, a special school setting, strategies for teaching the goals identified are included in teachers'*

*detailed work programs.*[Emphasis from Mr Greenwell]

Unfortunately, the "detailed work programs" were nowhere to be seen. The Student Support Group Guidelines set out quite clearly that it is the group with all its core members that develop the Individual Education Plans. The reality is, according to Mr Greenwell, the parent has no right to attend the group to take part in the educational planning, and cannot see the strategies to comment on them because they are not provided to them.

* 1. The writer refers to Attachment 2 which is her submission to the review of the *Disability Standards for Education* and the exhortations to the Federal Court by DET. Whether the topic was Individual Education Plans or Behaviour Plans, such plans did not even need to physically exist as far as DET are concerned.

1. Therefore, Victorian students with disabilities and their families are in a position where Student Support Groups and Individual Education Plans are actually mandatory[[21]](#footnote-21), however their guidelines are not.
2. This, in effect, means these **policies and guidelines are meaningless** and should only be seen to exist to create an impression of professionalism, until one scratches the surface and discovers that DET is actually not interested in any adherence.
3. In summary, these two important and vital supports are in effect, completely optional, unmonitored and flawed in practice. It is irrelevant how many training modules on the topics are put on the DET website, if no one needs follow the guidance.
4. The following Individual Education Plans provide an explanation to the reader as to the criticisms made by VEOHRC and VAGO. It is clear from this small example that there is absolutely no training around the development of these important documents.
   1. Attachment 3. This "Individual Learning Improvement Plan" is actually a file note with ‘learning goals’ that are all to be completed at home. It was the only learning plan. This young man left school without functional literacy and numeracy and is now on the Disability Support Pension. Of note:
      1. the "learning goals" are not goals;
      2. all of the activities are the responsibility of the student and his parent;
      3. there is no determination on how any progress will be measured;
      4. there is no provision for any explicit teaching of literacy or numeracy skills.
   2. Attachment 4. These "Individual Learning Goals" (names changed) look impressive until one actually reads the substance. Of note:
      1. most of the strategies reflect that the majority of learning is the responsibility of the parents;
      2. the responsibility of the parents is not only in the "Home Strategies" column, but also in the "strategies" column, which one could have inferred was the school's responsibility;
      3. in addition to that immediately above, there is a third separate section entitled "home/parents";
      4. the "evaluation" column, ostensibly designed to measure the outcomes, does not do so and contains terms so broad they are not measurable;
      5. "Billy" had cognitive disabilities affecting language and socialisation, however they are not even mentioned in the plan;
      6. one of these strategies is for a speech pathologist to identify appropriate strategies;
      7. the moralistic and pejorative " *Mr and Mrs Smith to support the school in holding Billy accountable for breaches of expected behaviour"* under "Current Skill" - the student has Autism Spectrum Disorder and received no formal social skills program at the school;
      8. when the writer and the parents devised an alternative Individual Education Plan including the child's disabilities, strategies and measurable outcomes, the school placed that plan in the middle of the plan attached;
      9. the student left the school without an Individual Education Plan ever being put in place.

See Attachment 5 as an example of the process a parent has gone through in an attempt to obtain an acceptable Individual Education Plan. Family names changed, correspondence sent to Christine Harris, Sydenham Hillside Primary School.

* 1. Attachment 6. Mt Erin Secondary College. Of note:
     1. most effective teaching strategy "*content is delivered in a normal way, but it's much more interesting*";
     2. example of a *"specific, measurable, achievable short-term goal"* is "*will get CSc and PP to give an outline of work being undertaken in term 2. In English and maths.*"- this is not a goal;
     3. most of the plan is blank;
     4. upon leaving school this student had to pay for private tuition in order to obtain basic reading and writing skills.

1. The above are just a few examples demonstrate the following:
   1. there is no requirement for an Individual Education Plan to take any form;
   2. teachers do not know how to identify a "goal";
   3. teachers do not know how to identify a "strategy";
   4. teachers do not know how to identify a "measurable outcome".
2. Students with disabilities need sophisticated responses and best practice teaching approaches. The writer submits that it is impossible for them to receive such support until teachers are provided with compulsory training, support and guidelines in order that they can competently undertake the writing of an Individual Education Plan.
3. When there are no measurable outcomes it is impossible to measure academic achievement and therefore impossible to measure the effectiveness of the academic and social strategy is being used. The writer submits that no other large organisation would operate in a manner that does not evaluate the effectiveness of those operations.

**D. Psychology/Behaviour Support FOR CHILDREN WITH**

**DISABILITIES IN VICTORIAN SCHOOLS**

1. The writer submits that the following is self-evident:
   1. if a child is experiencing challenging behaviours, they are distracted from their education and cannot learn;
   2. if a child is experiencing challenging behaviours and is responded to with abuse/restrictive practices, they are traumatised, acquire mental health problems and cannot learn;
   3. if a child is experiencing challenging behaviours and is physically removed from the classroom (often by an unqualified aide), they are not accessing their education.
2. The importance of the provision by departments of education of psychological services and expert behaviour support for students with disabilities cannot be overestimated.

**The effect of restrictive practices on educational achievement**

1. In its 2012 report "*Held Back - The Experiences of Students with Disabilities in Victorian Schools*" ("the Held Back Report"), the Victorian Equal Opportunity and Human Rights Commission ("VEOHRC") considered reports made to it from students, parents and teachers on the use of restrictive practices (restraint and seclusion) against students with disabilities.
2. VEOHRC argues that the use of restrictive interventions in government schools engages, and arguably limits, the following human rights under the Charter of *Human Rights and Responsibilities Act 2006[[22]](#footnote-22)*:
   1. Equality before the law
   2. Protection from torture and cruel, inhuman or degrading treatment
   3. Freedom of movement
   4. Protection of families and children
   5. Right to liberty and security of person
3. VEOHRC also raises the following treaties under which Australia has obligations that relate to the use of restraint and seclusion of children[[23]](#footnote-23):
   1. International Covenant on Civil and Political Rights
   2. International Covenant on Economic, Social and Cultural Rights
   3. Convention on the Rights of Persons with Disabilities
   4. Convention on the Rights of the Child
   5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
4. It is clear that restrictive practices are arguably violations of a child’s human rights, and dependent on the circumstances, can constitute abuse.
5. When there are alternatives to restrictive practices which are nonphysical, non-violent, and non-punitive, and those alternatives are withheld in preference to using restraint and seclusion, it is submitted that restraint and seclusion should be viewed as constituting abuse.
6. Such alternatives include evidence based psychological interventions. Unfortunately, while terms such as "evidence-based" are used prolifically in DET publications[[24]](#footnote-24), when attempting to negotiate positive behaviour support for students with disabilities there are numerous barriers which ensure that they do not actually receive "evidence-based" supports. These include the fact that:
   1. There is no explanation in DET publications as to what terms such as "evidence-based" actually mean, and most teachers do not know;
   2. Teachers must access (or should access) psychologists whose area of expertise is behaviour analysis, or Board Certified Behaviour Analysts in order to decide upon and implement evidence based psychological/behaviour interventions and they do not have the resources to do so;
   3. DET psychologists are in the main insufficiently trained in positive behaviour support themselves, and have been known to actually endorse and train staff in restraint and seclusion in preference to professional behaviour assessment and planning[[25]](#footnote-25).
7. Special Schools, despite the clear limitations of teacher training (and most teachers in special schools do not have special education training), believe their staff have the expertise to undertake Functional Behaviour Assessments, even without training from a professional whose expertise is behaviour analysis.[[26]](#footnote-26) As a result, adults who have not even mastered the skills to teach basic subjects like English [[27]](#footnote-27), and who are required to have some of the lowest ATAR scores to enter university [[28]](#footnote-28) are responsible for, and claiming to be experts in, children with complex disabilities and managing challenging behaviours.
8. These are the ingredients for an environment conducive to the mistreatment of students with disabilities, which then affects their ability to learn.

**Seclusion**

1. ***Seclusion*** *involves solitary confinement of a person in a room or area (e.g., garden) from which their exit is prevented by a barrier or another person. Seclusion includes situations in which people believe they cannot or should not leave an area without permission[[29]](#footnote-29).*
2. This definition is quite inconvenient to DET, who often use spaces that could be viewed benignly in and of themselves, were it not for the fact that children are being locked in such spaces, unable to leave, in response to challenging behaviours.
3. In addition to rooms whose sole purpose is to provide a space where teachers can lock children up, schools use and have used the following spaces to seclude children with disabilities:
4. courtyards[[30]](#footnote-30);
5. outdoor pens; [[31]](#footnote-31)
6. sensory gardens;[[32]](#footnote-32)
7. Seclusion areas also reported by parents include first aid rooms and store rooms[[33]](#footnote-33). These rooms have been used in mainstream schools where purpose-built seclusion rooms do not exist.
8. Seclusion performs the function of being a cheap alternative to putting in place intensive psychological interventions for students with disabilities who demonstrate challenging behaviours.
9. DET have refused calls to prohibit seclusion in government schools since 2012. In 2012, VEOHRC called for seclusion in schools to be prohibited in the context of their use involving children with disabilities.[[34]](#footnote-34) In early 2013, the Office of the Public Advocate called for seclusion in schools to be prohibited.[[35]](#footnote-35)
10. The Victorian Auditor General's Office ("VAGO") in 2012 found that DET "*policy and guidance documents assist schools to support students with special learning needs, however, gaps remain in critical areas such as* ***restraint, seclusion*** *and parents paying for additional support for their child*."[[36]](#footnote-36) [emphasis added]
11. There is no plausible reason why DET refuse recommendations from these respected statutory authorities. In the absence of any rational explanation, the following inferences may be drawn:
    1. DET believe that seclusion is appropriate in the “behaviour management" of children with disabilities; and/or
    2. DET have bowed to pressure from the Principals Association of Special Schools ("PASS") to allow them to deal with students with disabilities in any manner they see fit.
12. PASS, in their position paper curiously entitled "*PASS Position Paper on* ***Positive*** *Management Strategies*" [emphasis added], express teachers’ concerns "*regarding the advice from DEECD which infers that having the door “closed” contravenes their Human Rights."[[37]](#footnote-37)*
13. In fact, legal advice from the DET Legal Department to schools, according to PASS, indicate “*that if a student in time out is unable to remove him/herself of his/her own volition then time out with the door “closed” can be construed as illegal imprisonment in terms of common law*.“[[38]](#footnote-38)
14. This is extremely concerning, as PASS is not expressing concern that seclusion is ineffective, barbaric, and has contributed to the injury and deaths of people with disabilities. Rather it is concerned that there may be a negative consequence for their staff actions (locking children up), and they may not be able to continue to use seclusion as they have in the past.
15. What is also concerning is that the DET Legal Department have a view that DET employees had been acting illegally, and might continue to act illegally, but did not and have not taken any steps to prohibit such actions. In fact the DET Legal Department are often involved in vigourously and aggressively defending and justifying complaints of illegal imprisonment.
16. The recommendations in the Position Paper include the following:
    1. *that the DEECD implements procedures to endorse individual school policies re restraint of students so that teachers and other staff in specialist schools can work* ***with confidence*** [emphasis added]
    2. *that the DEECD implements procedures to endorse individual school policies re the use of time away so that teachers and other staff in specialist schools can work* ***with confidence*** [emphasis added]
17. In other words, PASS wish for each school to be able to develop and use its own policies, regardless of best practice, lack of consistency, dangers of injury and death, and lack of expert input.
18. PASS has received its wish, as seclusion continues to be used and approved, and restraint policies are so vague and broad that they allow almost any action by a staff member against children with a disability.
19. When a child is in seclusion, they are not accessing the curriculum.

**Examples of Seclusion used by DET**

1. The "Held Back" Report contains reports that schools use a variety of spaces to seclude children with disabilities, including a locked cupboard, a disused school room used for junk, outdoor ‘pens’, and designated ‘seclusion rooms’.[[39]](#footnote-39)
2. Outdoor pens, similar to those used to keep cattle or sheep in a small area are employed, ostensibly, to keep children with disabilities "safe" in outside areas. Such structures are cheaper than ensuring a secure perimeter fence for the school, putting in place formal walking programs, or obtaining the services of a qualified Behaviour Analyst in order to determine why a student may be trying to leave the school grounds.
3. However in reality, these areas are often used as a consequence for a student with challenging behaviours as children are observed to be locked in these areas on their own without contact with others or equipment.
4. As mentioned above, such pens have been photographed at Bulleen Special School, Southern Autistic School and Bendigo Special Developmental School. However it is likely that many special schools/special developmental schools have these areas, as they are clearly viewed as acceptable practice by DET. These areas can be used to place children with challenging behaviours in for hours at a time.
5. One of the worst external seclusion areas that have been brought to the writer's attention is the "Safe Room" at Bendigo Special Developmental School which is approximately the size of a disabled toilet, has wooden walls which cannot be seen through, and two bolts on the outside[[40]](#footnote-40).
6. This room has been included in the "behaviour management plans" of students - plans which despite endorsing extreme strategies, are not based on a Functional Behaviour Assessment and are not drawn up by a qualified Behaviour Analyst, or even a psychologist. An example contains such unsophisticated "strategies" such as "*If all else fails, give ….. a choice between doing X or going to the ‘safe room’." "If xxxx’s behaviour deteriorates and he doesn't respond, there is no point talking, just get him to the ‘safe room’ for time out. 2 able staff are required to escort him to the ‘safe room’"*.[[41]](#footnote-41)
7. As there are absolutely no regulations or guidelines on seclusion provided to school staff from DET, it is clear that staff drawing up such behaviour plans and forcing children into structures like the "safe room" have not the slightest understanding of what is required to ensure that children are safe in such an environment. Putting aside the fact that seclusion should only be used in extreme circumstances, and after more sophisticated evidence-based psychological interventions have been tried and have failed, it is clear that teachers have not been provided with regulations by any individual or organisation to ensure that seclusion is not misused - if one accepts that it should ever be used.
8. As can be seen in the plan:
   1. There is no direction as to the maximum length of any period in seclusion;
   2. There is no direction as to the number of times during a single day that a child should spend in the seclusion room.
   3. There is no requirement for the student to be observed at all times (impossible in this particular seclusion area).
   4. There are no directions or guidelines on restraint (clearly being used when the student is being "escorted" into the room).
   5. There is no requirement for any psychological intervention at any stage in the behaviour "model".
   6. There is mention on page 3 of having "*male staff on standby*" making it clear that the child is being physically forced into this room. Coupled with the fact that there are no guidelines or regulations on the types of physical force that can be used against students with disabilities, the example just provided is one fraught with danger and risk for both staff and students.
9. While this "structure" has allegedly been dismantled, it is clear it was certainly in use in 2010, and the same Principal that believed such mistreatment of students with disabilities was appropriate, remains in place.
10. In addition, a number of staff have confirmed that in 2010 there were also **cages inside classrooms**, which children were locked inside. Currently, outdoor pens with locks remain on the grounds.
11. Western Autistic School are reported to use seclusion rooms as a matter of course, without incident reporting or formal documentation.[[42]](#footnote-42)
12. A photograph of the timeout room at Wantirna Heights Special School (now Eastern Ranges Special School) is attached.[[43]](#footnote-43)
13. There are no guidelines from DET about seclusion rooms, including:
    1. if they are permitted at all;
    2. minimum size;
    3. what they may be built from;
    4. if they require observation windows/video cameras to enable observation;
    5. maximum amount of time to be spent in seclusion;
    6. what records of the seclusion must be kept;
    7. what psychological interventions must be put in place before seclusion is used.
14. Marnebek School had a seclusion room which was clearly marked on a school map as a "Timeout Room "[[44]](#footnote-44)(TR). Numerous parents describe the room as having a window which was painted over, being empty, no bigger than a disabled toilet, and having bolts on the outside of the room. After a parent complaint and anticipating legal action, Marnebek quickly "renovated" the room leaving no evidence to allow its investigation as a seclusion room. It is unknown where students are now secluded.
15. Similarly, Hume Valley Special School, upon receipt of a complaint from an older student of being locked in the dark in a room called the "Blue Room" in 2012, also quickly "renovated" the room, going so far as to even replace the door. It then denied the seclusion took place, and denied the structural make-up of the room, while having destroyed the evidence that upheld the student's complaint.
16. Marnebek documents in its Student Code of Conduct that it will use "time out" as a consequence of inappropriate behaviour[[45]](#footnote-45). It should be noted that the Marnebek "Timeout" room was not a sensory room or a "calming" room, but that described above. In fact the oft used euphemistic descriptions of seclusion rooms as "timeout" rooms has the effect that parents are not provided with the information they need about the treatment of children with disabilities.
17. Wantirna Heights School admitted in a recent court case that when one of their students demonstrated challenging behaviours they placed him in the classroom bathroom/toilets, at times with the door shut[[46]](#footnote-46), but in any event not allowing him to leave. This again highlights the inherent risk associated with an absence of regulation resulting in ignorant staff placing a child who is demonstrate challenging behaviours in a room with hard and sharp surfaces. The stupidity and recklessness of such an action is hard to understand. There was no documentation, and no parental consent sought.

**Restraint**

1. Until mid-2012, the single guidance note for staff subjecting children with disabilities to restraint was Regulation 15 of the *Education and Training Reform Act 2006.* Regulation 15 consists of one sentence only, which is as follows:

*“A member of the staff of a Government school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student or any other person.”*

1. While the paucity of information in this one sentence speaks for itself, for the sake of completeness the following should be noted.
   1. There is no explanation as to what constitutes an action which is "reasonable".
   2. There is no definition of what constitutes an act or behaviour which is "dangerous".
   3. The interpretation of this sentence is left to individual staff.
   4. There is no requirement for any psychological intervention or comprehensive behaviour assessment, regardless of how many times restraint might be used.
2. Despite DET creating a Restraint Policy[[47]](#footnote-47) just before the VEOHRC "Held Back" Report was released, Regulation 15 is still the response of choice when DET defends itself and its staff against their use of restrictive practices against children with disabilities[[48]](#footnote-48). Indeed the new Secretary Ms Gill Callister has already endorsed Regulation 15.[[49]](#footnote-49)
3. Attached are minutes entitled Student Support Group Meeting[[50]](#footnote-50) where in response to parents maintaining they did not want their child subjected to restraint and seclusion, school staff quote the "DEECD Policy" on the left-hand side of the page. Interestingly, though, the only part of the Policy they quote is Regulation 15, giving themselves permission to do anything they believe is "reasonable". No other part of the policy is quoted.
4. Interestingly, the DET Autism Coach was in attendance at this meeting offering no evidence based interventions. It should be noted that DET Autism Coaches are not required to have any actual qualifications in Autism but are held out to be "experts". Despite planning on restraining the child as can be understood by the discussion, no formal behaviour support from a psychologist was provided.
5. The Restraint Policy dated May 2012 and reviewed in March 2014 (remaining unchanged) is two pages long, and like most other DET policies is labelled a "guide". In other words, staff are not even required to follow the policy. This has been the standard response by DET to other of its documents, making most publications from DET meaningless.
6. The current Restraint Policy is completely inadequate, and given the nature of most of its contents, can be relied upon to give little or no assistance to staff.

# The Federation of Community Legal Centres’ Submission on the Draft *Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector*[[51]](#footnote-51) made the following points:

*“The recent DEECD Restraint Policy dated 2012 can be compared to the Office of the Senior Practitioner May 2011 guidelines on restrictive practices.*

*The DEECD policy:*

*Allows restraint to prevent the student from ‘inflicting harm’ on themselves or others. Such a phrase, not identifying the seriousness of that harm, allows a teacher to restrain in the event of a child simply hitting another child. There is no attempt to define ‘harm’, and therefore each staff person is able to interpret the phrase individually.*

*Allows restraint when there is ‘no reasonable alternative’ that can be taken to avoid the danger. There is no guidance to staff on what ‘reasonable alternatives’ may be, and there is no definition of ‘danger’.*

*Disallows restraint unless ‘alternative measures to avoid the danger have been exhausted’. There is no attempt to give guidance on what may be ‘alternative measures’.*

*Gives no guidance on which restraint holds are acceptable and which are not. There is no warning that restraints have been known to cause death and injury, or which restraints are most likely to do so.*

*States that it is ‘advisable’ that staff using restraint should be trained. It gives no guidance on that training, and in fact the DEECD openly admits to using martial arts instructors as trainers.*

*Asks staff to ‘consider’ a number of factors such as ‘medical conditions’ and so on but gives no guidance as to how they should consider such factors, and how those factors will be impacted upon by the use of restraint.*

*Does not require permission for restraint from any person within or outside the organisation that may have expertise in this area.*

*There is no mention of Positive Behaviour Support, Functional Behaviour Assessment and Analysis, or the role of psychologists in the mitigation of challenging behaviours.”*

1. The Restraint Policy solidifies the ambiguity that is a hallmark of DET policies, procedures and guidelines in order that even when claiming to follow the Policy there is little danger of many staff actions being found to be in breach.
   1. The Policy states, amongst other things, that:
      1. *Restraint* ***should*** *not be used unless alternative measures to avoid the danger of harm have been exhausted*
      2. *Restraint* ***should*** *never be used in the following circumstances:*
      3. *Restraint* ***should*** *not be used on a student in any of the following circumstances*
      4. *Restraint* ***should*** *not be used unless all of the following conditions are met*
      5. *If applying restraint, staff* ***should*** *only:*
      6. *Staff* ***should*** *talk to the student throughout the incident. Staff* ***should*** *make it clear to the student when and why the restraint is to be applied. Staff* ***should*** *also calmly explain that the restraint will stop once it is no longer necessary to protect the student and/or others.*
      7. *It is also advisable that* ***whenever possible****:*
      8. *“Only staff trained in using restraint* ***should*** *use restraint on a student."*
      9. *Only staff trained in using restraint* ***should*** *use restraint on a student.*
      10. *A staff member* ***should*** *contact the student’s parents and provide them with details of the incident as soon as possible.*
      11. *The incident* ***may*** *need to be reported to:*
      12. *A written record of the incident and the restraint used must be made by the principal as soon as practicable. This record* ***should*** *detail:*
      13. *The principal* ***should*** *also arrange for all staff who were involved/present at the incident to prepare a statement / record of their involvement or observations of the incident.*
2. It would be possible, of course, for a government department to interpret the word "should" as "must". However to ensure there is no misapprehension of how DET define this word, when the Restraint Policy has been challenged regarding the training of staff who restrained a child who had been subjected to repeated restraint in her short school life, Regional Director Ms Jeanette Nagorcka stated the following:

"*I am advised by principal xxxxxxxxx that Ms xxxxxxxx does not have specific training in relation to student restraint and note that such training is not required for teachers in Victoria."*

1. Ms Nagorcka further states, just in case there was an interpretation of the policy that parents should be provided with any formal written notification of such restraint:

*"I advise that application to access these records can be made in writing to:*

*FOI and Privacy"[[52]](#footnote-52)*

The mother did make the application. No documents of the restraint were provided.

1. However it should be noted that despite this young girl with Autism being restrained and 'contained' throughout one period of her school life for **45 minutes[[53]](#footnote-53) every morning**, her parents were not notified either verbally or in writing. If it were not for discovering an e-mail after the student left, at no time would the child's parents have known what they were doing to her. Despite numerous notifications of the restraint to Regional Director Jeanette Nagorcka, Ms Nagorcka has simply decided not to respond to the matter. Needless to say, there has been no concern expressed by any DET staff member at the harm and trauma that would be expected to be caused by such actions.
2. The unprofessionalism, dearth of best practice and general inadequacy of the DET Restraint Policy is no doubt why the Victorian Auditor General's Office recommended that DET review this policy[[54]](#footnote-54). DET did so. It remains the same.
3. As an example of restraint guidelines developed for the protection of adults with disabilities by the Victorian Government Office of Professional Practice (previously known as the Office of the Senior Practitioner), the *Physical Restraint Direction Paper[[55]](#footnote-55)* is a document of some 20 pages, and is supported by the *Disability Act 2006.*
4. There is no comparison to be made between the two documents, suffice to say that the DET policy provides children with no protection, and staff with no real guidance. What is most disturbing is the obvious comfort DET have with the status quo.
5. Children cannot learn in these conditions

**Examples of restraint used by DET**

1. The VEOHRC "Held Back" Report includes the following types of restraints reported to them by parents:
   1. students taped to a chair;
   2. "roped" out of a tree;
   3. grabbed by the back of the neck and pulled to the ground;
   4. prone restraint.[[56]](#footnote-56)
2. Restraints reported directly to the writer include:
   1. aides knocking down children by collapsing the back of their legs, and then restraining them on the ground;
   2. basket holds;
   3. "frog marching";
   4. twisting arms behind backs and then forcing children to the ground;
   5. head locks;
   6. strapping children to chairs[[57]](#footnote-57).
3. Restraint is documented by Marnebek School to be a consequence of inappropriate behaviour[[58]](#footnote-58).
4. Schools that subject students with disabilities to physical restraint in the absence of Functional Behaviour Assessments or the intervention of experts qualified in behaviour analysis have been reported to the writer as including the following:
   * + 1. Alfredton Primary School (documented)
       2. Bendigo Special Developmental School (documented)
       3. Bulleen Heights School (documented by video)
       4. Manor Lakes College (documented)
       5. Maple Street Primary School (documented)
       6. Marnebek School (documented)
       7. Monash Special Developmental School (documented by photograph and report)
       8. Specimen Hill Primary School (documented)
       9. Wantirna Heights School (now Eastern Ranges) (documented)
       10. Wendouree Primary School (documented)
       11. Western Autistic School (documented)
5. Given the lack of documentation and transparency around restraint, these schools should be seen as the tip of the iceberg.
6. Martial Arts expert, James Sumarac has been used extensively by the DET to "train" staff in restraint. It is important to note that DET could require schools, in preference to hiring martial arts experts to train staff, to engage Board Certified Behaviour Analysts to train staff in evidence-based non-violent responses to challenging behaviours. They have chosen not to do so.
7. Mr Sumarac has trained staff in at least the following schools:
   * + 1. Barina School
       2. Bendigo Special Developmental School
       3. Bulleen Heights School
       4. Dandenong Valley Special School
       5. Manor Lakes College
       6. Naranga School
       7. Wantirna Heights School (now Eastern Ranges)
8. The above list of schools only represents those schools that have admitted such training in the course of a complaint, are listed on Mr Sumarac’s website as endorsing his training, or from staff training certificates provided to the writer. It should be assumed that such training has been provided more widely than the list above.
9. Staff at Bendigo Special Developmental School report having received pressure point training from Mr Sumarac and have been observed to use that ‘technique’ on students with disabilities.
10. Using masking tape around the wrists is documented as a strategy to stop a student removing his clothing[[59]](#footnote-59) in a Bendigo SDS behaviour plan. All behaviour strategies included in plans are signed off by the Principal.
11. A parent at Marnebek School observed a child being rolled up in a blanket and dragged down a corridor in response to non-compliance[[60]](#footnote-60).
12. It difficult to know just how long the Martial Arts ‘Therapy’ ("MAT") Program has been running using MAT Support Officers ("MSOs") to work with children with moderate to severe challenging behaviours. It is important to understand that this is not describing a program that teaches students martial arts. MSO’s are trained in "safe restraint techniques".[[61]](#footnote-61)
13. It is not clear whether martial arts experts are training these personnel, but given the name of the program, it is likely. Once again, this is a program being advertised by Eastern Metropolitan Region of DET in place of any formal training occurring in Behaviour Analysis.
14. It was as recently as August 2014 that Anzuk, a recruiting agency, were advertising for the position of Martial Arts Therapy Aides to work "*in a range of special needs and primary schools in Melbourne's eastern suburbs*"[[62]](#footnote-62). As is consistent with the use of euphemisms by DET to distract parents from the real nature of such "supports", DET choose to put the word "therapy" after the words "Martial Arts" in order one assumes, to soften the description. A non-essential component for those who wished to apply, was working previously in a special need setting or school. This, one can infer, is because the focus is on using martial arts rather than having any expertise in educating children with disabilities.
15. DET includes in the key selection criteria for such staff, "*a caring and enthusiastic nature*". Research and evidence seems to have passed DET by in relation to the fact that restraint causes injury, death, and trauma.
16. This advertisement was withdrawn as soon as a story in The Age newspaper appeared discussing the advertisement.
17. Reports continue to be made in relation to restrictive practices used against students with disabilities in schools. Every year that DET refuse to prohibit seclusion, one can only assume that it is being used. Indeed special schools continue to be built with such purpose-built rooms.

**The result of the failure by DET to use evidence based psychological behaviour interventions to respond to challenging behaviours**

1. It is important that those unfamiliar with the area of challenging behaviours and evidence-based psychological interventions understand that in the vast majority of cases, restraint and seclusion are simply not required to address challenging behaviours, and in fact are ineffective, worsen behaviours and create trauma, injury and death.

**Injury and death as a result of restraint and seclusion**

1. It has been known for a significant period of time that children with disabilities (and adults with and without disabilities) have been injured or killed through the use of restraint and seclusion. It is inconceivable that a government department that has responsibilities *in loco parentis,* and has a Student Support Services Department employing psychologists, is unaware of such research/reporting.
2. In fact the issue of students suffering these consequences in schools specifically, has been the subject of significant reporting[[63]](#footnote-63). Outside of the school environment, much work has been done by another Victorian government department, the Department of Health and Human Services, which has been producing publications through the Office of Professional Practice, that set out the harm of restraint and seclusion against people with disabilities more generally.[[64]](#footnote-64)
3. The Australian Psychological Society has often worked hand-in-hand with the Office of Professional Practice (formerly Office of the Senior Practitioner) and published numerous documents on the subject of eliminating restraint and seclusion and the harm such practices cause, each document referencing numerous other research information and reports.[[65]](#footnote-65)
4. It is impossible that DET are not aware of the risks of restraint and seclusion - not only for students but for staff, if only for the fact that the writer has advised them in writing of this research on numerous occasions over a number of years. Their failure to prohibit seclusion, or give detailed guidance on restraint, should therefore be viewed as deliberate, reckless and negligent.

**Positive Behaviour Support**

1. The concept of School Wide Positive Behaviour Support has been claimed by DET as a tenet of its own since 2006.
2. The Royal Children's Hospital Educational Institute ("the Institute") is a funded arm of DET.[[66]](#footnote-66) DET has members on the Board.
3. The Institute’s 2005 Annual Report sets out that the DET funding for that financial year was $1.2 million. In 2013-2014, the funding was $2.8 million.
4. The relevance of this information, to this submission, is that in 2006 the Institute produced a resource document entitled "*Students with Disabilities: a Curriculum Toolkit for Schools and Teachers*"[[67]](#footnote-67) ("the Toolkit"). The Toolkit, as can be seen by the front cover, is intended to be a resource for students with disabilities. DET have been attempting to disown many of its contents (in addition to the contents of its own publications) ever since parents and advocates have been raising the question as to why DET practice does not conform to its contents.
5. Component 5 of the Toolkit is entitled "*Promoting Positive Behaviour Support (PBS) in Schools*"[[68]](#footnote-68).
6. Parents and advocates have been waiting for Positive Behaviour Support to make an appearance in schools since 2006. DET again refers to "*Schoolwide Positive Behaviour Support*" in their Student Engagement Policy Guideline.[[69]](#footnote-69) There has been no sign of such positive behaviour support in a practical sense in government schools, and in fact the practical experience of students with disabilities and their families has been completely the opposite.
7. The Toolkit correctly describes the current state of play (at that time, being 2006) in what had historically been referred to as "traditional behaviour management" and Positive Behaviour Support. The description is replicated below from page 110.

|  |  |
| --- | --- |
| **Traditional Behaviour Management** | **Positive Behaviour Support** |
| Views individuals as "the problem" | Few systems, settings, and skill deficiencies as "the problem" |
| Attempts to "fix" the individual | Attempts to "fix" systems, settings, and skills |
| Extinguishers behaviour | Creates new contacts, experiences, relationships and skills |
| Sanctions adversive approaches | Sanctions positive approaches |
| Takes days or weeks to "fix" a single behaviour | Implemented by a dynamic in collaborative team using person centred planning in typical settings |
| Often resorted to when systems are flexible | Flourishes when systems are flexible |
|  | Accept the importance of a holistic approach supporting students and their families |

1. Since the publication of this document (and prior to), the evidence is that DET continues to deal with students with disabilities pursuant to the "traditional behaviour management" approach.
2. The policies and procedures of both mainstream and special schools include codes of conduct and behaviour policies that reflect a punitive model. However DET attitudes can best be summed up towards students with disabilities by examining the role models from senior management and how they view challenging behaviours. Not only do they rarely look inwards and contemplate how their own staff incompetence and environment may contribute to challenging behaviours (or even be the sole cause of them), but the manner in which they speak about challenging behaviours and the children with disabilities that exhibit them, gives us some insight as to how abuse against those children flourishes in school environments.
3. *"….. it is the expectation that the Department of School take active steps to reduce the need for restraint through the implementation of appropriate programs and support for students* ***exhibiting violent, dangerous and/or aggressive*** *behaviours."* [Emphasis added]
4. The above quote is from Regional Director Jeanette Nagorcka[[70]](#footnote-70) in response to a complaint about the restraint of a primary school aged girl with Autism Spectrum Disorder, who is now so traumatised by her schooling experience that it has been recommended by a psychologist that she not attend school.
5. A word search through a recent Federal Court Case regarding a young boy with moderate-severe Autism Spectrum Disorder will easily find the word "aggressive" in relation to his behaviour numerous times, but not the word "challenging".[[71]](#footnote-71) This is due to the fact that DET portrayed him in this manner during the trial despite his Severe Autism Spectrum Disorder, and despite the fact that he had been subjected to restraint and seclusion most of his school life, thereby, no doubt, traumatising him and contributing to his challenging behaviours.
6. *"I am confident that the resources currently being developed for schools, including training based on schoolwide positive behaviour support, extended guidance and support material around avoiding and managing challenging and* ***threatening*** *behaviours, will further strengthen capacitive schools comply with their legal obligations and to provide an inclusive schooling that supports diversity."*
7. This response was from Deputy Secretary Nicholas Pole when asked to appoint an independent investigator to look at the abuse of children with disabilities at Marnebek School.[[72]](#footnote-72) He declined o do so.
8. Currently, on the website of the Senate Community Affairs Community Affairs Reference Committee[[73]](#footnote-73) is a letter in response to submissions from Communication Rights Australia and Disability Discrimination Legal service from Ms Gill Callister, Secretary DET dated 27 July 2015.
9. When Ms Callister responds to allegations of restrictive practices used against students with disabilities exhibiting challenging behaviours, she refers to "*students who are exhibiting* ***violent and dangerous*** *behaviours…*".
10. An example of DET Behaviour Plans demonstrates the following:
    1. DET do not use Positive Behaviour Support, and rely on punishment and consequence;
    2. DET staff have no training in writing behaviour plans, hence DET plans have little in common other than their poor quality and lack of any best practice approach.
11. Not able to be provided to the Senate, are the "invisible" DET behaviour plans, which are ‘unwritten’. These invisible behaviour plans are used extensively by DET when defending themselves against abusive practices. The benefits of invisible plans of course, are that the DET staff can claim these plans contained all manner of goals, strategies, measurable outcomes and demonstrable expertise.
12. There is no hint of embarrassment by DET when claiming that having these invisible plans is an appropriate mechanism by which to address challenging behaviours.
13. In a Federal Court trial, staff from Bulleen Heights School were not embarrassed to give the following information in relation to their behaviour plans for a child that they viewed appropriate to restrain, with the guidance of a Martial Arts expert, but not appropriate to receive any sort of formality in terms of positive behaviour support.

*James’ classroom teacher Ms Glenis Vieux had a behaviour management plan for him (though it was not labelled as such) which was* ***written on a whiteboard*** *or placed on the wall. The purpose of the behaviour management plan was to set goals and put strategies in place to achieve those goals. Ms Vieux analysed James’ behaviour on a daily basis.* [86]*[[74]](#footnote-74)*

1. Needless to say, the "behaviour management plan" and the "analysis" could not be produced.
2. *James’ classroom teacher Ms Ranjit Kaur did* ***not use a formalised behaviour management plan****, preferring to use her own work program. She did not seek the assistance of a multi-disciplinary team.* [87]
3. [87] *In 2007, James’ teacher Ms Heather Mosley also employed a range of behaviour management strategies and gave evidence that these strategies were recorded in a formal behaviour management plan,* ***though no such document was available*** *for production at trial.*
4. Three different teachers, three invisible behaviour plans.
5. From a DET Statement of Defence dated 16 May 2014[[75]](#footnote-75) regarding a young primary school boy subjected to repeated restraint.

"*There were written and* ***unwritten behaviour management plans*** *in place*"

1. When plans are not written down, the goals, specific strategies and desired outcomes for individual students are unclear or even completely unknown by school staff, consultants and parents.
2. In this case, placing HP in the store room (referred to euphemistically as the "safe space") was a measure taken to "*enforce*" the "*behavioural standards*" of the school and "*reduce restraint*". We therefore have a claim that seclusion is reducing restraint. Clearly either school staff members or DET Legal Department may actually believe that one restrictive practice cures another. What is a conundrum is whether DET actually believe the evidence they give to courts and tribunals, or that they are corrupt enough to give false information in order to defend their practices and staff in a legal complaint. It is hard to decide which situation is worse.
3. Until this "law and order" approach to challenging behaviours exhibited by children with disabilities is replaced by thoughtful, sophisticated evidence-based approaches based on psychology, restraint and seclusion will continue in Victorian government schools, and children will not learn.

**Examples of behaviour plans**

1. And what do such Behaviour Management Plans look like?
   1. Behaviour Plan 1. Golden Square Primary School.[[76]](#footnote-76)

This was reported to the writer as being for a child in Grade 1. Recalling the "traditional behaviour approach" allegedly eschewed by DET, we have the following:

*You are expected to do your work.*

*You need to sit on the floor during group time.*

*You need to listen when it's not your turn to speak.*

*If you are not following the teachers instructions or hurting other students feelings your name will be put on board (sic) and an explanation given. [Inappropriate behaviour consequences will be followed].*

Note the threat of humiliation in front of the rest of the class by having the child's name written on the blackboard.

However, among other firm directives, the following must be the most inappropriate.

*If threatening, aggressive or at risk of hurting self or others in line with ministerial order 184, then Suspension will occur.*

* 1. Behaviour Plan 2. Golden Square Primary School.

In response to the writer requesting to know why a Behaviour Plan had not been put in place for a young girl ("Jane") who had been subjected to multiple instances of physical restraint and is too traumatised to attend school due to her school experiences, Regional Director Jeanette Nagorcka responded with the following in a letter to the writer dated 24 June 2014.

*I refer you to some examples of these below and indicate the documents they are drawn from:*

* *Classroom suggestions:*

*‘xxxxx mentioned that Jane has an iPad and it is filled with her video creations. This may prove useful as a settling activity in the morning.’*

* *‘Emotional engagement: set up for success where possible. Consistent friends/buddies to encourage play and return to class’*
* *‘Implement a program that addresses Jane’s sensory issues’*

*(Feb 12 2013 ILEP)*

* *‘Unsettled behaviour: if Jane is crying, screaming or unsettled in any way she will remain in well-being room until she is calm. Once calm, she can watch her DVD and follow the (agreed) plan’*
* *‘If Jane becomes unsettled in class, Jane will be removed to the well-being room where staff will follow (the agreed) plan’*

*(190713 Engagement Plan July.doc)*

* *Education Support Staff:*
  + *‘Work with the class teacher to develop an appropriate modified learning program (and) implement a program that addresses Jane’s sensory issues’*
  + *‘Provide support and consistency to ensure the day is more predictable for Jane’*
  + *‘Redirect and intervene in a timely manner ie. to de-escalate situations rather than waiting for another staff member to get the classroom to assist’*
* *‘Learning tasks will be differentiated to suit Jane's learning style to promote successful outcomes that will ensure a positive day’*

*(200913 Engagement Plan July.doc)*

* *‘Jane to take responsibility and time how long she works and how long she plays. More play than work, work needs to be simple, on laptop not pencils’.*

*(PSG 16 Sept.doc)*

Ms Nagorcka's (and presumably the regional psychologist’s) view was that pulling random sentences out of a number of documents constituted a Behaviour Plan.

No Functional Behaviour Assessment, no goals, no detailed description of behaviours that needed to be mitigated, no measurable outcomes, and therefore nothing to measure. Suffice to say, the "Plan" was an abject failure. If anyone wanted to view the "plan", they would have to be drawn to a number of different documents.

* 1. Individual Behaviour Plan 1. Marnebek School. 2010[[77]](#footnote-77).

*Strategies*

*If his behaviour esculates (sic) and you find the need to restrain him, he will lash out with kicking and biting. He is best to be escorted to the timeout room with two people.*

Here, seclusion is actually written into the plan, along with restraint to get the child to the room.

* 1. Individual Behaviour Plan 2. Marnebek School. 2011[[78]](#footnote-78)

*Possible Triggers*

*"timeout/exclusion for a negative behaviour often escalates his behaviour."*

And of course there is a reason for that observation, which is that behaviours are not effectively addressed by seclusion and exclusion - they are worsened.

* 1. Individual Behaviour Plan 3. Marnebek School. 2011/2012[[79]](#footnote-79)

*Triggers - Time out*

To clarify, under the list of figures for challenging behaviours (second from the left) in this document, you will see "timeout" which we know to be seclusion at Marnebek. Here Marnebek School is identifying what is obvious to most behaviour analysts and clearly in the literature - seclusion does nothing except to cause trauma.

* 1. Excerpts from a Behaviour Management Plan from Ballarat Christian College 2012.

*\*\*\*If you have seriously threatened or vilified a student or staff member at any time you will be removed from your class and will remain there until you are collected. Your family will need to attend a parent teacher conference before we can consider your return.*

*You will be given one warning that the way you are behaving is not ok.*

*On the second morning you will be asked to go to a Headteacher so that your classmates can concentrate on their work.*

*If you seriously disrupt the learning environment a third time in one day, you will be sent home and asked to stay home on the following day. We all need to be clear about the consequences of your choices.*

*If there are six times in a week where you need to be removed from class (these will be recorded) we will call a meeting with your family and teachers to discuss where we go from here.*

The Plan had more detail, including a requirement for the student to sign an "agreement".

The child in question had ADHD. Needless to say, he did not last at the school, was excluded from activities such as the school camp as punishment for his behaviours and his parents sensibly withdrew him. He did not seem to have the same behavioural difficulties at his new school. A number of students with disabilities have been withdrawn from Ballarat Christian College.

1. It should be noted that the plans set out above in subparagraphs (c), (d) and (e) were not shown to the parents at any time and were obtained through the Freedom of Information process. It is most likely this is because they make it clear that restrictive practices will be used. This contradicts DET Secretary Gill Callister’s claims in her recent letter to the Senate Community Affairs Reference Committee mentioned above in page 2 of this submission. "[*Parents and carers are] … invited to …. work with their child's school to develop a Behaviour Support Plan*."

**Functional Behaviour Assessment**

1. A Functional Behaviour Assessment ("FBA") is an assessment based on evidence where the aim is to determine the function of a challenging behaviour in order that you can then effectively address that behaviour. It is a psychological/behaviour analytical intervention, available to be used in preference to violence.
2. The writer has seen only one FBA emanate from a Victorian School after a consultant was brought in, earlier this year. It did not reflect the professionalism of such an assessment being performed by somebody with the appropriate qualifications. As is often the case, only the threat and then subsequent lodging of a legal complaint obtained such an assessment, despite this young primary school girl being subjected to restraint.
3. Due to the failure by DET to ensure the individual was qualified to undertake the assessment, it was only partially completed, and failed.
4. While a number of special schools have begun writing about the importance of behaviour analysis in some of their documentation, their practices continue to be restrictive, because they are not trained in behaviour analysis and do not have the funding from DET to pay for someone who is.
5. An FBA is something which, when a behaviour is mild, may be completed by teachers trained in the exercise by someone who is suitably qualified. However when behaviours are significantly challenging, particularly challenging enough to warrant (in the minds of DET) restraint and seclusion, then such assessments must be done by someone qualified to do so. This has passed DET by, who continue to claim that their staff are competent to undertake such assessments, despite no formal training, and despite evidence over months and years that their positive behaviour plans are ineffective.
6. An FBA requires thorough data collection and careful analysis. There is a plethora of information about Functional Behaviour Assessments[[80]](#footnote-80), and Australia is fortunate enough to have a number of Board Certified Behaviour Analysts in the country - holding the highest qualification internationally. DET do not use them.
7. Rather than data collection, for example, we have "anecdotal" notes taken, in all manner of forms, and not even such anecdotal notes are available when asked for. When a staff member from Marnebek School was being asked in a tribunal hearing at VCAT last year as to where her claimed "anecdotal" notes were that informed her alleged behaviour analysis, her answer was "*Possibly in my garage*"[[81]](#footnote-81). And so to add to the collection of invisible documents and processes, we have the invisible Functional Behaviour Assessment. A discussion of why teachers are taking personal student documents home (therefore conveniently out of the reach of Freedom of Information requests) needs to take place.
8. For the young boy in question with Severe Autism Spectrum Disorder, who had the use of a wrist strap written into his Behaviour Plan (not shown to his parents), who his parents observed being restrained, and who another parent observed being secluded, in the view of Marnebek staff his Behaviour Plan did not warrant any formality in terms of what it was based upon, and did not warrant being shared with those who know him best, his parents.
9. It did not matter that this child was being dragged from his family's car in the mornings due to not wanting to enter the school grounds. It did not matter that this child was starting to self harm by knocking his head into the ground and saying he did not want to go to school. It did not matter that this child's behaviour deteriorated to a point where it was clear he was experiencing extreme trauma.
10. In Marnebek's view, an unqualified "Behaviour Analyst" (a teacher with social work qualifications), Ms Emma McCarthy, continued to advise staff, and behaviour plans were rolled over month after month, despite their ineffectiveness, until the family withdrew their child.
11. Leaving Marnebek School and the culture of behaviours and consequences, restraint and seclusion, happily changed this child's life and he now enjoys a mainstream school without violence, and professional programs based on behaviour analysis.
12. It is inconceivable that when children are being treated violently in schools by teachers, that appropriate professional assistance is not being engaged in order that all evidence-based psychological approaches are provided.
13. While FBAs are common practice in some areas of service provision, and particularly in other countries which have a more sophisticated approach to dealing with the challenging behaviours of people with disabilities, DET continues to comfortably operate in a vacuum of best practice, preferring instead to use its lockable indoor and outdoor "safe" rooms, and restraint.
14. This is unacceptable.
15. It is worth noting that the boy in receipt of the invisible behaviour plans set out in paragraphs 148-152 and described so negatively in paragraph 140 suddenly lost all his challenging behaviours upon moving to a school that used professional staff trained in behaviour analysis. He is not the only Victorian child with Autism Spectrum Disorder that has moved overseas just to receive evidence-based teaching from competent staff.
16. Currently, DET NW Region is using a person who calls himself a "Behaviour Analyst" to undertake Functional Behaviour Assessments and train staff in Functional Behaviour Assessments. According to the "Behaviour Analyst" himself, his only related behaviour analysis qualification is a small component within a Bachelor of Arts. When the writer, on behalf of parents of a child that the “Behaviour Analyst” had written a Functional Behaviour Assessment for challenged the professionalism of the Assessment and asked for clarifying information, the "Behaviour Analyst" refused to respond. More importantly, the assessment had no effect on the child's behaviour. This, to date, has been of no concern to DET.
17. This reflects a much broader issue that runs as a theme throughout this document, that is that DET are unconcerned with results of approaches whether they are educational or behavioural. As they are not required to measure and report on the effectiveness of any educational or behavioural strategies they use (either internally or to parents), whether an approach actually succeeds is of little interest to them.

**Rejection by DET of evidence-based practice**

1. As mentioned above in paragraph 6, school staff demonstrate continuously that they do not understand the term "evidence-based" practice, however more dangerously, when brought to their attention, DET formally reject such practice.
2. In K v State of Victoria[[82]](#footnote-82) DET strenuously argued against the suggestion that Applied Behaviour Analysis ("ABA") should be seen as a proper and reasonable intervention for it to use in the education of students with Autism Spectrum Disorder.
3. This leaves the Victorian DET out on a limb in terms of international research and approaches, and is an educational embarrassment as far as best practice goes. Putting decades of international research aside, and the findings of the National Standards Report[[83]](#footnote-83) (perhaps the largest meta analysis of its kind ever undertaken) Australia has also produced reports which arrive at conclusions commensurate with international research in relation to ABA.
4. In 2011, a report was published[[84]](#footnote-84) by the Australian Society for Autism Research, contributed to by professionals from The University of Melbourne, Griffith University, the University of Queensland, the University of Melbourne and the Royal Children's Hospital. It concluded that the only established evidence based intervention for Autism was ABA.
5. The National Autism Center Report, breaking down the components of ABA individually, covered adults up to the age of 22 years old.
6. The fact that the Australian court case mentioned directly above had DET arguing against the application of ABA but clearly for (as was the evidence in this court case) restraint, seclusion, and training of staff by martial arts experts, one wonders what is in the minds of senior DET bureaucrats.
7. Thirty-two other nations including China and New Zealand offer Behaviour Analyst Certification Board approved course sequences in their universities. Australia urgently needs to catch up.
8. The Victorian Auditor General's Office identified in 2012:

*Since 2006, DEECD has distributed more than $2.6 billion to schools through the PSD.*

*However, DEECD does not have the information it needs to determine whether PSD funding is being used efficiently and effectively. Concerns raised about this by VAGO in 2007 still have not been adequately addressed and instead of having five years worth of high-quality data about the program, the department still knows very little about its impact on the educational outcomes of supported students.[[85]](#footnote-85)*

1. *"Proper funding in theory should support ethical and accountable practice but not without clear unambiguous practice and ethical guidelines, appropriate credentialing, proper regulation and proper mechanisms for addressing consumer complaints. Unfortunately high remuneration with low levels of accountability and no requirement for formal credentials in evidence based practice is a powerful contingency supporting unethical practice*." The writer’s client.
2. The thrust of the Victorian Auditor General's comments, are that DET does not operate from an evidence base.

**E. SUSPENSIONS/EXPULSIONS**

1. Linked strongly with the above section relating to the failure by departments of education to use expert psychological and behaviour supports is the issue of suspension and expulsion of students with disabilities.
2. Students with disabilities continue to receive suspensions and are being expelled for challenging behaviours. At times, this even occurs at special schools. Given it is the law that students attend school, the act of suspending and expelling children is inexplicable as it just moves what DET consider a "problem" to another school.
3. As yet another example of DET's failure to collect best practice evidence and pass it on to staff, the research on suspensions reflects that it is ineffective in counter-productive.[[86]](#footnote-86)

**F. DISABILITY Discrimination Act**

1. The writer refers to the attached submission to the Commonwealth Department of Education and Training (Attachment 2). Current discrimination legislation does not uphold the rights of students with disabilities to access a quality education.

**G. Bullying**

1. Children with disabilities are often the targets of bullying, for obvious reasons. Children with cognitive disabilities often do not engender the same understanding and sympathy from their peers as do, for example, children who are blind or are in wheelchairs. Some statistics in relation to Autism Spectrum Disorder and bullying reveal the following.
2. 22 out of 22 parents of children with Aspergers Syndrome, aged 11-19, reported that their children were being victimised by peers. On average, these children were victimised 1.25 times per week. 23 % of parents reported that their children were victimised two or more times per week[[87]](#footnote-87).
3. 94% of 400 parents of children with ASD, aged 4-17, reported that their children had been bullied or victimised[[88]](#footnote-88).
4. Children with ASD are 4 times more likely to be bullied than their peers[[89]](#footnote-89).
5. 160 000 children miss school each day (presumably in the US) because they are afraid of being bullied or harassed[[90]](#footnote-90).
6. Children have a 75% chance of being bullied throughout their school years from kindergarten until the end of high school[[91]](#footnote-91).
7. In 1993 27% of middle-school students worldwide reported often being bullied[[92]](#footnote-92).
8. Many Victorian Schools have not seemed to grasp yet the concept of preventative approaches to bullying, and rather focus on meaningless (to children) bullying policies (for example "zero tolerance") and restorative approaches (reactive). Putting that aside, the writer has had a number of experiences attempting to advocate for students with disabilities who report bullying, and regrettably has experienced a common response.
9. While advocating for a student at Wedderburn College, I received a letter containing the following:
10. "*The College is aware that currently incidents occur which xxxx* ***perceives*** *to be bullying. In all these cases, including those that xxxx has reported, our investigations have indicated that the conduct complained of has been misinterpreted by xxxx or did not in fact occur as he stated*.[[93]](#footnote-93)" [emphasis added]
11. In other words, when questioned, the children without disabilities who did the bullying gave a different story to the victim, and they were believed. Meanwhile the victim acquired an adjustment disorder, was ultimately too frightened to attend school and had to leave. As is often the case in North-Western Victorian region, handling of the matter was endorsed by the Regional Director.
12. This is not an atypical example of DET responses to bullying. There is little hope for students with disabilities who are being bullied, when they are disbelieved by school staff. The consequences of bullying are well known to the community, and have included suicide. The question is why wouldn't school staff believe that a child with a disability was being bullied if they reported such bullying. It is difficult to find an answer to that question, except perhaps that at all times DET is observed to act in a defensive manner, fearing legal action against it. Senior DET staff have not yet understood that it is their failure to ever admit fault and make reparation that actually acts as a driver for litigation.
13. It is unclear what it will take to change the attitudes of Victorian schools to the bullying of children with disabilities. It is ironic, though, that if a child with a disability is having a meltdown and may injure another, that child is described as having “assaulted” someone. However when they asked for protection themselves, they are often ignored.
14. When children are bullied, they can spend much of their school life being fearful. They may change schools if the bullying is not competently addressed. The writer submits that either result is counter-productive in terms of a environment conducive to academic achievement.

**H. School Buses**

1. DET contract bus companies to run buses between special schools and the homes of children with disabilities. There have been numerous examples of abuses reported against children in school buses, including, for example, accusations that a child was tied up on a bus[[94]](#footnote-94).
2. However the most significant ongoing inhumane and degrading treatment of children with disabilities is the fact that it is DET Policy that children can spend up to 2 hours one way on a bus from their home to the school. That is, in total, **four hours per day**. In that four hours they cannot access toilets, and can commonly urinate or defecate on the bus. They cannot eat or drink. Some children may be strapped into a seat for that length of time due to the fact that, understandably, they do not wish to remain seated.
3. This issue has been raised with DET over a period of years, and they refuse to resolve the issue, which is simply to ensure there are more bus services. The two-hour long trips are not particularly required because children live far away from their school, it is because the number of buses contracted are limited due to a disinterest by DET in spending sufficient money in order to ensure that students with disabilities are treated humanely. A private car running directly to the school may take 20 minutes.
4. Such treatment cannot be justified. However the writer submits it is fair to draw the inference that by the time a child has spent two hours in uncomfortable and frustrating conditions simply arriving at school they are not in an optimum condition to learn. Similarly, the added exhaustion for students’ time away from home stretches from a six-hour day to a 10 hour day and impacts on their general health and well-being, and therefore ability to learn.
5. **Complaints ProcessES**
6. It is vital that parents have an effective complaints process in order that issues regarding their children's education can be effectively addressed. The writer refers to Attachment 5 as an example where a complaint about an individual education plan took over half a year with no result. In the meantime, the student's education was in hiatus.
7. The internal DET complaints process is of little use, except that if one wishes to go to the ombudsman one will be referred back to the internal complaints process and therefore it becomes something that is required. The reason parents ultimately litigate is that they cannot get the slightest satisfaction through any internal DET process. DET personnel at many levels are aggressive, adversarial, and respond in a manner that reflects they are interested only in the protection of their own staff.
8. Regrettably, and inexplicably, DET seem to prefer litigating rather than making any admission. This is no doubt on the advice of the Legal Department, who perhaps because they are lawyers, assume that every parent wishes for an apology or acceptance that something will not happen again, only in order that they can sue. This is perhaps more of a reflection on DET than parents.
9. An example of a complaint that will provide the Senate Committee with a typical example of how DET handle complaints follows.

|  |
| --- |
| Case Study 3  On 20 December 2012, the writer sent a letter to the Regional  Director, DET Grampians Region in relation to "John" who was a  young primary school child with Autism Spectrum Disorder.[[95]](#footnote-95) The  writer made a complaint about the repeated restraint  and illegal imprisonment of this young boy.  The writer advised the Region that while attending Alfredton Primary School, John had been:   * *" held on the ground by ankles while other staff cross his arms, and then been dragged around the school*   + *secluded in a room for such periods that he has urinating and soiled himself, not eating food, becoming dehydrated* "   The writer advised that John's mother Mrs Smith, after transferring John to Wendouree Primary School, had advised them expressly not to subject her son to restraint and seclusion, which staff had ignored.  The writer reported that staff had subjected John to restraint and assault:   * + *without gaining the consent of Mr and Mrs xxxxx;*   + *without documentation;*   + *without staff being trained in restraint, and therefore knowing which restraint holds are safe and which are dangerous;*   + *without having put in place other methods such as:*   *Drawing up a Behaviour Support Plan Based on a Functional Behaviour Assessment and Analysis;*  *Employing a behavioural psychologist or behaviouralist to develop, closely supervise, monitor and evaluate such a plan*  The Regional Director was advised that until he could guarantee the safety of John, given the psychological and physical injuries John was experiencing (John had begun to self harm), John would not be attending school.  The writer asked the Regional Director to respond "*immediately*".  On 31 January 2013, over one month later, the writer wrote to the Regional Director[[96]](#footnote-96) noting that John had the right to attend school as his nondisabled peers did, and asking for an urgent response to the letter dated 20th of December 2012.  On 4 February 2013, the writer wrote to the Regional Director[[97]](#footnote-97), the letter being reproduced below.  *I refer to my letters to you dated 20 December 2012, 31*  *January 2013 also marked "URGENT".*  *Mrs xxxx is unable to sustain home schooling of xxxx. She is*  *not registered for home schooling. xxxx needs to attend school,*  *without being restrained, as soon as possible.*  ***Please advise immediately****.*  On 6 February 2013, the writer wrote to the Regional Director[[98]](#footnote-98), the letter being reproduced below.  *I refer to my letters to dated 20 December 2012, 31 January*  *2013, 4 February 2013 also marked "URGENT".*  *Mrs xxxx is unable to sustain home schooling of xxxx. She*  *is not registered for home schooling. xxxx needs to attend school, without being restrained, as soon as possible.*  ***Please advise immediately****.*  The Deputy Regional Director then sent the writer a one-page letter[[99]](#footnote-99), which consisted of this sentence, among a few others.  "*Following a review of the documented learning plans and*  *procedures in place for xxxx at Wendouree Primary School and*  *incident reports from 2012 relating to xxxx, I believe the school*  *has responded appropriately and within DEECD policy*  *guidelines to xxxx’s identified needs."*  The letter ended with an encouragement to return John to the very school that had been subjecting him to restraint and seclusion. John's name was misspelt throughout the letter.  Shocked at the brief response to the issues raised, including actions which can cause injury and death, the writer then sent the following letter to the Deputy Regional Director[[100]](#footnote-100) on 7 February 2013.  Despite this four-page letter setting out numerous breaches of internal DET policy and procedure, not even a response was received.  After forwarding a complaint to then Minister for Education Dixon, who then gave Deputy Secretary Nicholas Pole the responsibility for following up the matter, the writer received a letter dated 12 March 2013.[[101]](#footnote-101)  This one-page letter addressed none of the individual complaints. Mr Pole’s response to what had occurred in the past was summed up in this one sentence.  "*I am informed that the Acting Deputy Regional Director reviewed the educational plans and procedures in place for xxxx at Wendouree Primary School, as well as incident reports from 2012, and has come to the view that the school responded that xxxx needs appropriately and accordance with DEECD guidelines*." |

1. And that was it. It is only by comparing Mr Pole's response to the letter that was sent to him that the full extent of his contempt for this process is revealed.
2. This example is typical of many other complaints the writer has assisted parents of children with disabilities to make using the internal complaints system at DET. The contempt with which DET treat such complaints reflects their complete confidence that they are not required to actually address any detail of a complaint they receive.
3. The final insult to the child and his family was that when the Ombudsman investigated the investigation, it did not exist. However clearly Deputy Secretary Nicholas Pole was not bothered by such detail when deciding to ignore allegations of the alleged abuse of a young boy with disabilities, (which the boy continues to have counselling about), and instead supported his regional office staff.
4. It is worth pausing to consider the seriousness of what is happening at senior levels of DET, including their Legal Department. Apart from the internal Legal Department advice to PASS (mentioned above in paragraphs 66 and 67) in relation to seclusion constituting illegal imprisonment, the *Crimes Act 1958* supports such a view. A plaintiff need only prove that another person has unlawfully deprived them of their liberty, either intentionally or negligently, in any circumstances.
5. So here we have a complaint about something that could clearly constitute a criminal act, and Mr Pole, upon receiving the complaint, simply states that someone has "informed" him that the matter has been investigated. The question to be asked is, if a senior bureaucrat of DET is informed that there are possible criminal acts occurring against students with disabilities and declines to investigate, does this constitute corruption?
6. Perhaps it is a more appropriate question for IBAC. On the other hand, perhaps it is a question for the Australian community.

|  |
| --- |
| Case Study 4  On 19 March 2012, the parent of child with Severe Autism Spectrum Disorder wrote to Marnebek School Principal Karen Dauncey and amongst other things:   * + expressed concern about a bruise found on her son’s right arm she believed came from adult handling   + expressed concern about a bite mark found on her son's chest   + asked for a written response on how her son would be kept safe from injuries in the future.   She received no response.  On 27 March 2012, the same parent wrote to Ms Dauncey about an incident where she saw her son being manhandled by a staff member.  She received no response.  On 7 May 2012, the same parent wrote to Marnebek Principal Ms Dauncey and amongst other things, expressed concern that her son:   * + was being locked in an outdoor garden for the entire duration of play time   + had been led around the school using a wrist strap ‘like an animal’   + was being physically restrained at assembly   + was refusing to go to school - screaming, crying and refusing to walk down the hall to his classroom   + was self harming by smacking his head into the floor   + was losing his academic skills   The parent said she was concerned that her son's safety, well-being and anxiety was spiralling out of control.  She advised she was withdrawing her son from the school.  She received no response in relation to any of her allegations of neglect and mistreatment. |

1. The above is an example, not only of DET staff disinterest in reports of abuse and neglect of children with disabilities, but also of a complaints process where parents are treated with contempt.

**J. BEST practice/evidence-based teaching approaches**

1. There is no direction from DET to teachers as to what are evidence-based and/or best practice programs. Given the challenges teachers are experiencing with basic teaching as set out above in paragraph 56, it is clear that until teaching universities change the way they approach their teaching courses, teachers require further support and direction.

|  |
| --- |
| Case Study 5  Reading Recovery is a 1:1 program only for students in Year 1, and runs daily for between 12 and 20 weeks. The Reading Recovery author insists that it be used only with Year 1 students.  The writer’s client who had a Severe Language Disorder and Borderline IQ was receiving the Reading Recovery program in Year 7. She has left school without functional literacy and numeracy skills and receives a government benefit. |

|  |
| --- |
| Case Study 6  John had a severe language disorder and dyslexia. One of the "strategies" used with John was "silent sustained reading". This is where a child sits with a book in front of them and a teacher hopes they will read it to themselves, but does not know because it is "silent". |

1. Teachers, presumably supported by DET, have given evidence in court cases at the Federal Court criticising evidence-based literacy and numeracy programs, or upholding their rights to use such programs in non-compliance when the manufacturer’s instructions. When a student, as would be expected, then fails to learn literacy and numeracy skills, teachers have given evidence that it is because the students do not have the capacity to learn. There is no evidence of this.

**K. impact**

1. The impact of all the discrimination, non-provision of Allied health professional support, insufficient funding, bullying and failure to use evidence-based best practice teaching principals has the following consequences for students:
   1. failure to obtain basic literacy and numeracy skills;
   2. acquisition of psychological/mental health disorders due to mistreatment and abuse;
   3. home schooling and Distance Education;
   4. failure to acquire socialisation skills that are integral part of attending school at mixing with other students;
   5. all of the above.
2. The consequences for parents are as follows:
   1. parent unable to work to the refusal of schools to accept students full time;
   2. parent unable to work due to school constantly calling parent asking they take the child home due to unaddressed challenging behaviours;
   3. parental depression/anxiety/mental health disorder due to long-term stress of dealing with school;
   4. parental depression/anxiety/mental health disorder due to inability to protect child from abusive practices in school.
3. The consequences for society are as follows:
   1. when challenging behaviours exhibited by students with disabilities in mainstream schools are not professionally addressed, a negative and unfair impression is created of those students and affects the perception of disability by students without disabilities;
   2. when students are segregated from students without disabilities in special schools due to mainstream schools encouraging parents to enroll their children there, students without disabilities are not growing up side by side with their disabled peers which can often contribute to discrimination in later life against people with disabilities.
4. The consequences for government of students with disabilities being uneducated include:
   1. students with disabilities not been provided with the basic academic skills to undertake tertiary education;
   2. students with disabilities going from school straight to the Disability Support Pension due to their inability to work;
   3. students with disabilities moving from school straight to disability services due to trauma and is challenging behaviours acquired during their school experience;
   4. loss of taxes paid;
   5. increased financial support being provided to the juvenile justice system.
5. There are no positive impacts or consequences, the writer submits, to any part of society as a result of the current inadequate state of education for students with disabilities.

**Recommendations**

1. If the Victorian Department of Education and Training had any intentions of removing the many and varied barriers that students with disabilities had to accessing their education, it would have done so after receiving the statutory reports referred to throughout this submission, in 2012.

If the Victorian Department of Education and Training viewed the education of students with disabilities as a serious issue, there would have been ramifications for senior DET employees in 2012 in response to reports which clearly reflect significant failure.

If the Victorian Department of Education and Training was minded to begin reallocating the millions of dollars they spend on litigation to student support, they would have done so by now. They have not.

Given the significant costs to the Commonwealth Government of students with disabilities leaving secondary school without the necessary skills to undertake further education or gain employment, it is the writer’s submission that only the Commonwealth may have an interest in, and the power to, change the course of education for students with disabilities.

**Recommendation:** That funding to State Governments be contingent on specific criteria being met in relation to educational outcomes of students with disabilities, and the elimination of restrictive practices. Such criteria needing to be specific and measurable, in order that it is meaningful.

1. Case law reflects that Australia's antidiscrimination legislation is inadequate.

**Recommendation:**  That recent reviews of the *Disability Discrimination Act 1992* and the *Disability Standards for Education 2005* be acted upon.

1. **Recommendation:** That the Commonwealth require an Education Worker Exclusion List be established, modelled on the current disability services models.
2. **Recommendation:** That the Commonwealth require every school in every state to advertise its use of restrictive practices in order that parents are able to have complete information about the risks of enrolling their students in those schools.
3. **Recommendation:** That the Commonwealth ensures there is an independent body to receive complaints relating to students with disabilities in schools across Australia.

**ATTACHMENTS**

Attachment 1. Speech Pathology Plan 2012

Attachment 2. Submission on the *Disability Standards for Education* 2005

Attachment 3 Individual Education Plan Panton Hill Primary School

Attachment 4 Individual Education Plan Sydenham Hillside Primary School

Attachment 5. History requesting Individual Education Plan.

Attachment 6. Individual Education Plan Mt Erin Secondary College Attachment 7 Courtyard Marnebek School

Attachment 8. Bulleen Heights School Pens

Attachment 9 Southern Autistic School Pen

Attachment 10 "Safe Room" Bendigo Special Developmental School

Attachment 11 Position Paper on Positive Management Strategies PASS

Attachment 12 Behaviour Management Plan Bendigo SDS

Attachment 13 Timeout Wantirna Heights School

Attachment 14. Map Marnebek School

Attachment 15. Student Code of Conduct, Marnebek School

Attachment 16. DET Restraint Policy

Attachment 17. SSG minutes Wendouree Primary School

Attachment 18. MAT Program Eastern Metropolitan Region

Attachment 19. ANZUK Advertisements for Martial Arts Trained Aide.

Attachment 20. Behaviour Plan Golden Square Primary School

Attachment 21 Behaviour Plan Marnebek School 2010

Attachment 22 Behaviour Plan Marnebek School 2011

Attachment 23 Behaviour Plan Marnebek School 2011/2012

Attachment 24 Letter Julie Phillips to Mr Peter Henry, Deputy Regional Director

7 February 2013

**ABBREVIATIONS**

DET Department of Education and Training

IBAC Independent Broad-based Anticorruption Commission

FBA Functional Behaviour Assessment

MAT Martial Arts Therapy

MSO MAT Support Officer

ODSC Office of the Disability Support Commissioner

OPA Office of the Public Advocate

PASS Principals Association of Special Schools

PECS Picture Exchange Communication System

VE0HRC Victorian Equal Opportunity and Human Rights Commission

1. Victorian Equal Opportunity and Human Rights Commission Report "Held Back-the Experiences of Students with Disabilities in Victorian Schools" 2012 [↑](#footnote-ref-1)
2. Turner v Department of Education and Training (Anti Discrimination) [2007] VCAT 873 Decision [524] [↑](#footnote-ref-2)
3. Program for Students with Disabilities Guidelines 2005 p12 [↑](#footnote-ref-3)
4. Program for Students with Disabilities Guidelines 2005 p16 [↑](#footnote-ref-4)
5. "Held Back-the Experiences of Students with Disabilities in Victorian Schools" VEOHRC 2012 [↑](#footnote-ref-5)
6. See Program for Students with Disabilities Guidelines inc Educational Needs Questionnaire 2015 [↑](#footnote-ref-6)
7. Submission 11, Speech Pathology Australia 8. [↑](#footnote-ref-7)
8. Submission 11, Speech Pathology Australia 8. [↑](#footnote-ref-8)
9. The writer refers to the recent IBAC enquiries into DET [↑](#footnote-ref-9)
10. See Royal Children's Hospital Educational Institute yearly Annual Reports [↑](#footnote-ref-10)
11. Turner v Department of Education and Training (Anti Discrimination) [2007] Decision to [544 ] [↑](#footnote-ref-11)
12. Prof Sheena Reilly, Turner v Department of Education and Training (Anti Discrimination) [2007] VCAT 873 Decision [540] [↑](#footnote-ref-12)
13. http://www.education.vic.gov.au/school/teachers/support/pages/lsp.aspx [↑](#footnote-ref-13)
14. Victorian Auditor General Office Report "Programs for Students with Special Learning Needs" p 13 [↑](#footnote-ref-14)
15. Program for Students with Disabilities Guidelines 2015 p5 [↑](#footnote-ref-15)
16. Program for Students with Disabilities Handbook 2015 p 4 [↑](#footnote-ref-16)
17. Program for Students with Disabilities Handbook 2015 p 32 [↑](#footnote-ref-17)
18. "Held Back-Experiences of Students with Disabilities in Victorian Schools" p82 [↑](#footnote-ref-18)
19. Letter Peter Greenwell to parent 29 January 2015 [↑](#footnote-ref-19)
20. Student Support Group Guidelines 2015 p4 [↑](#footnote-ref-20)
21. "Programs for Students with Special Learning Needs" VAGO p x [↑](#footnote-ref-21)
22. "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 107 [↑](#footnote-ref-22)
23. "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 109 [↑](#footnote-ref-23)
24. "*Effective Schools Are Engaging Schools*" 2009 DET; *Blueprint for Education and Early Childhood Development* DET 2008 [↑](#footnote-ref-24)
25. DET Psychologist servicing Maple Street Primary School, DET Psychologists at Special Schools who routinely use restraint and seclusion as behaviour "consequences" such as Marnebek School

    (refer Code of Conduct). [↑](#footnote-ref-25)
26. Marnebek School, Cranbourne, Victoria evidence given at VCAT 2012 HL v State of Victoria &

    Karen Dauncey A64/2013 [↑](#footnote-ref-26)
27. *Asia-Pacific Journal of Teacher Education, 33*(1), 65-76

    *Australian Journal of Learning Disabilities, 10*(1),3-8

    *Future directions in literacy: International conversations 2007*. University of Sydney

    *From New Directions to Action:World class teaching and school leadership* Department of Education

    and Early Childhood Development. (2013).

    *Issues paper - Education and Training Workforce: Schools Workforce Study* Australian Government

    Productivity Commission. (2011). [↑](#footnote-ref-27)
28. “*The average ATAR (tertiary entrance rank) for education courses in Victoria was 61.9 this year,*

    *dropping as low as 40.25. This compares to an ATAR of 98.95 for biomedicine at Melbourne*

    *University and 98 for law at Monash University*”.Topsfield, J. (2014). Graduate teachers not up to

    scratch: State government The Age, 10/7/2014

    *Teacher quality: getting it right*. Voice, 9(3). Dinham, S. (2013). [http://www.voice.unimelb.edu.au/volume-9/number- 3/teacher-quality-getting-it-right](http://www.voice.unimelb.edu.au/volume-9/number-%20%20%20%203/teacher-quality-getting-it-right) [↑](#footnote-ref-28)
29. ‘Evidence-based Guidelines to Reduce the Need for Restrictive Practices in the Disability

    Sector’2011 Australian Psychological Society p 11 [↑](#footnote-ref-29)
30. See Attachments 7 & 8 Marnebek School, Bulleen Heights School [↑](#footnote-ref-30)
31. See Attachments 9 & 10 Southern Autistic School, Bendigo Special Developmental School [↑](#footnote-ref-31)
32. Marnebek School [↑](#footnote-ref-32)
33. Alfredton Primary School, Wendouree Primary School [↑](#footnote-ref-33)
34. "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p 14 [↑](#footnote-ref-34)
35. Position Statement "*Restrictive Interventions in Educational Settings"* Office of the Public Advocate

    March 2013 [↑](#footnote-ref-35)
36. "*Programs for Students with Special Learning Needs*" VAGO 2012 p21 [↑](#footnote-ref-36)
37. See Attachment 11 PASS Position Paper on Positive Management Strategies June 2011 p4 [↑](#footnote-ref-37)
38. PASS Position Paper on Positive Management Strategies June 2011 p3 [↑](#footnote-ref-38)
39. "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p112,113 [↑](#footnote-ref-39)
40. See Attachment 10 "Safe Room” Bendigo Special Developmental School [↑](#footnote-ref-40)
41. See Attachment 12 Behaviour Management Plan Bendigo Special Developmental School [↑](#footnote-ref-41)
42. See Case Study 1 [↑](#footnote-ref-42)
43. See Attachment 13 [↑](#footnote-ref-43)
44. See Attachment 14 [↑](#footnote-ref-44)
45. See Attachment 15 Marnebek School Communication Books "Student Code of Conduct" [↑](#footnote-ref-45)
46. K v State of Victoria [2013] FCA 1398 and in one [↑](#footnote-ref-46)
47. See Attachment 16 [↑](#footnote-ref-47)
48. Letter to parents 4 April 2014 North-Western Regional Director Jeanette Nagorcka

    Letter to parents 24 June 2014 North-Western Regional Director Jeanette Nagorcka

    Letter to parents 9 March 2012 Acting General Manager, Coordination and Strategy Division,

    Education Partnerships Division, Ms Helen Clarke [↑](#footnote-ref-48)
49. Letter Gill Callister to Rebecca Kelly 27 March 2015 [↑](#footnote-ref-49)
50. See Attachment 17 SSG Minutes Wendouree Primary School 12 December 2012 [↑](#footnote-ref-50)
51. # ‘Submission on the Draft Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector’ Federation of Community Legal Centres June 2013 p6

    [↑](#footnote-ref-51)
52. Letter to parents Regional Director Jeanette Nagorcka 4 April 2014 [↑](#footnote-ref-52)
53. Documented in E-Mail from Specimen Hill Primary School dated 29 November 2012 [↑](#footnote-ref-53)
54. "*Programs for Students with Special Learning Needs*" VAGO 2012 Recommendation 4 [↑](#footnote-ref-54)
55. *Senior Practitioner Physical Restraint Direction Paper*, May 2011 [↑](#footnote-ref-55)
56. "Held Back-Experiences of Students with Disabilities in Victorian Schools" VEOHRC p110,111 [↑](#footnote-ref-56)
57. Photographic evidence Monash Special Developmental School, Observation of Behaviour Consultant (report supplied upon request) "*At its worst guarding can take extreme forms. In the recent past the writer returned at a specialist school in which little autistic children were being strapped into their chairs notionally to stop the running away. However all such mechanical restraint does is increase the child's efforts to escape. It does not address the issue of positive training.*" [↑](#footnote-ref-57)
58. See Attachment to 15. Marnebek School Communication Books "Student Code of Conduct" [↑](#footnote-ref-58)
59. Behaviour Management Plan, Bendigo Special Developmental School 1 September 2009 [↑](#footnote-ref-59)
60. UK Daily Mail Report 19 May 2014 <http://www.dailymail.co.uk/news/article-2632432/Parents-accuse-Melbourne-special-needs-school-mistreating-children.html#ixzz32D5ozygY> [↑](#footnote-ref-60)
61. See Attachment 18. Http : //www. emroptions. vic. edu. aulmat-program/redirection [↑](#footnote-ref-61)
62. See Attachment 19. ANZUK recruitment advertisement 9 August 2014 [↑](#footnote-ref-62)
63. "*School Is Not Supposed to Hurt*" 2009 (National Disability Rights Network)

    *"Unsafe In The Schoolhouse: Abuse Of Children With Disabilities*" 2009, The Council of Parent Attorneys and Advocates Inc

    *"Seclusions and Restraints - Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centres" 2009,* United States Government Accountability Office. [↑](#footnote-ref-63)
64. "*From Seclusion to Solutions"* 2007

    "*Physical Restraint in Disability Services"* 2009

    *"Senior Practitioner Physical Restraint Direction Paper"* May 2011 [↑](#footnote-ref-64)
65. "*Evidence-based Guidelines to Reduce the need for restrictive practices in the disability sector*." Australian psychological Society 2011 [↑](#footnote-ref-65)
66. http://www.rch.org.au/education/# [↑](#footnote-ref-66)
67. See RCH Educational Institute Annual Report 2005, p14 [↑](#footnote-ref-67)
68. *Students with Disabilities: a Curriculum Toolkit for Schools and Teachers* p109 [↑](#footnote-ref-68)
69. *Effective Schools Are Engaging Schools* Department of Education and Early Childhood Development 2009 [↑](#footnote-ref-69)
70. Letter to parents dated 24 June 2014 [↑](#footnote-ref-70)
71. K v State of Victoria [2013] FCA 1398 [↑](#footnote-ref-71)
72. Letter to writer from Nicholas Pole dated 9 May 2014. [↑](#footnote-ref-72)
73. http://www.aph.gov.au/Parliamentary\_Business/Committees/Senate/Community\_Affairs/Violence\_abuse\_neglect/Submissions [↑](#footnote-ref-73)
74. K v State of Victoria [2013] FCA 1398 [↑](#footnote-ref-74)
75. HP v State of Victoria A34/2013 [↑](#footnote-ref-75)
76. See Attachment 20. [↑](#footnote-ref-76)
77. See Attachment 21 [↑](#footnote-ref-77)
78. See Attachment 22 [↑](#footnote-ref-78)
79. See Attachment 23 [↑](#footnote-ref-79)
80. http://www.educateautism.com/functional-behaviour-assessment.html [↑](#footnote-ref-80)
81. Ms Lauren Wood, *HL v State of Victoria and Karen Dauncey* Tx 552 [↑](#footnote-ref-81)
82. K v State of Victoria [2013] FCA 1398 [↑](#footnote-ref-82)
83. "The National standards Project-Addressing the Need for Evidence-based Practice Guidelines for Autism Spectrum Disorders" National Autism Center 2009 [↑](#footnote-ref-83)
84. *A Review of the Research to Identify the Most Effective Models of Practice in Early Intervention for Children with Autism Spectrum Disorders* 2011 [↑](#footnote-ref-84)
85. Victorian Auditor General's Office "Programs for Students with Special Learning Needs" p viii [↑](#footnote-ref-85)
86. "School Suspensions" 2010 Murdoch Children's Research Institute, University of Melbourne, Royal Children's Hospital [↑](#footnote-ref-86)
87. Konstanareas, M (2005) “Anxiety and Depression in Children and Adolescents with Asperger Syndrome” in K Stoddart (ed.) *Children, Youth and Adults with Asperger Syndrome.* London: Jessica Kingsley Publishers [↑](#footnote-ref-87)
88. Heinrichs, R (2003) *Perfect Targets: Asperger Syndrome and Bullying – Practical Solutions for*

    *Surviving the Social World.*  Shawnee Mission, KS: Autism Asperger Publishing Company. [↑](#footnote-ref-88)
89. Little, L (2002) “Middle-class mothers’ perceptions of peer and sibling victimization among children

    with Asperger Syndrome and nonverbal learning disorders” *Issues Comprehensive Paediatric*

    *Nursing 25,* 43-47. [↑](#footnote-ref-89)
90. Fried, S and Fried, P (1996) *Bullies and Victims .*New York: M Evans and Company Inc.

    Gray, C (2003) “Gray’s guide to bullying” *Jenison Autism Journal 16,* 1, 1-60. [↑](#footnote-ref-90)
91. Hoover, JH and Oliver, RJ (1996) *The Bullying Prevention Handbook: A Guide for Principals,*

    *Teachers and Counselors.* Bloomington, IN: National educational Service [↑](#footnote-ref-91)
92. Smith, PK and Whitney, I (1993) “A survey of the nature and extent of bullying in junior/middle and

    secondary school” *Educational Research 35,* 1, 3-25. [↑](#footnote-ref-92)
93. Letter to Julie Phillips dated 20 May 2014, Principal Wedderburn College. [↑](#footnote-ref-93)
94. http://www.thecourier.com.au/story/1415058/vcat-damages-bid-after-disabled-child-tied-up-on-bus/ [↑](#footnote-ref-94)
95. letter Julie Phillips to Regional Director Mr Grant Rau [↑](#footnote-ref-95)
96. J Phillips to Mr Grant Rau, Regional Director DET 31 January 2013 [↑](#footnote-ref-96)
97. J Phillips to Mr Grant Rau, Regional Director, DET 4 February 2013 [↑](#footnote-ref-97)
98. J Phillips to Mr Grant Rau, Regional Director, DDT 6 February 2013 [↑](#footnote-ref-98)
99. Letter Mr Peter Henry Deputy Regional Director to J Phillips 6 February 2013 [↑](#footnote-ref-99)
100. Attachment 24 Letter Julie Phillips to Mr Peter Henry, Deputy Regional Director 7 February 2013 [↑](#footnote-ref-100)
101. Letter Nicholas Pole to Julie Phillips 12 March 2013 [↑](#footnote-ref-101)