

**Submission
No 199**

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

Organisation: Public Service Association of NSW

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Submission to the Inquiry into Students with Disability or Special Needs in NSW schools

Legislative Council
General Purpose Standing Committee No. 3

February 2017

1 Recommendations

- 1.1 That the Department of Education protect, and look to enhance conditions of employment for teaching and support staff in regional, rural and remote locations contained within Awards; to improve the quality, experience and availability of these staff to students with a disability or special need.
- 1.2 Funding for students in regional, rural and remote settings be increased to reflect the inherent disadvantage of living in such areas.
- 1.3 Review the funding quantum currently available for students with a disability or special needs to reflect the massive increase in students who require support. Revise the formula to take into account students suffering from multiple conditions and have their funding reflect the complexity such situations create.
- 1.4 Review the staffing formula to favour the permanent appointment of SLSO staff to support students on a more secure footing. Ie across the full term of their schooling.
- 1.5 That the Department of Education mandate the provision of immediate relief for SLSO staff when absent to protect the rights of students with disabilities or special needs.
- 1.6 That the Department of Education improve planning practices to ensure that sufficient trained special needs teachers are available to cover absences of identified teaching positions.
- 1.7 The NSW Department of Education, in consultation with the PSA, review the use and handling of prescribed drugs within NSW Schools to ensure best practice in management of students' medical needs.
- 1.8 The NSW Department of Education, in consultation with the PSA, develop a policy on health care of students with a disability or special need enrolled in public schools. That this policy reflects the same guaranteed standards of care and training as are required by NSW Health when dealing with medical procedures in schools.
- 1.9 That the Department of Education implement a mandatory training package for new SLSO staff at least equivalent to a Certificate III level and ongoing training for existing staff to support their continued development and maximise their contribution within the classroom.

2 Introduction

- 2.1 The Public Service Association of NSW (PSA) is an active, member-driven union. Our members have a long and proud tradition of improving the lives of the people of New South Wales through delivering a diverse range of services in the public sector and related entities, state owned corporations, TAFE NSW and universities. We proudly represent 39,000 members spread over almost 5,000 worksites.
- 2.2 The PSA represents employees throughout the Public school system of NSW. This includes School Learning Support Officers (SLSO) and Aboriginal Education Assistants, the front line of support for students with disabilities or special needs in the classroom. The PSA also represents the administrative staff at schools who deal with students on a daily basis and the policy and administrative staff at the Department of Education who formulate and implement departmental policy state-wide.
- 2.3 In addition, the PSA represents employees in the government Agency of Ageing, Disability and Home Care; and a number of other government agencies dealing with members of the public requiring assistance for disability or special needs. This includes staff in NSW gaols and Juvenile Justice centres, Community Services and their role in protecting vulnerable children and through the NSW TAFE and Universities sector.
- 2.4 We welcome the opportunity to participate in this inquiry. We do so as part of a broader movement and acknowledge the roles of our fellow Unions and their members.
- 2.5 The PSA is proud of the skill, professionalism and dedication of its members in providing such a valuable service to the community. Our members do a tough job and care about the educational outcomes of their students.
- 2.6 This submission has been developed in consultation with our members responsible for the delivery of services to students in schools, members with experience of dealing with disabilities in other government sectors, our Industrial staff, and the cooperation and assistance of our fellow professionals in the NSW Nurses & Midwives' Association (NSWNMA) and the NSW Teachers Federation.

3 2010 Parliamentary Inquiry

- 3.1 In July 2010 the General Purpose Standing Committee No. 2 issued its report into The provision of education to students with a disability or special needs. The PSA provided a submission to that Inquiry which is attached to this submission as **Appendix A**.
- 3.2 It is disheartening that many of the issues covered by our submission to this Inquiry are similar to those investigated and reported on in the previous Inquiry. Funding (quotient and model), support for rural and regional areas, professional training and accreditation for SLSO staff will feature in this submission just as they did in our last submission from seven years ago, without better public policy or educational outcomes having arrived for our members or the students they support.

3.3 Many of the recommendations made in this submission mirror those made at the earlier enquiry.

4 Equitable Access to resources in Regional, rural and remote areas

4.1 Equitable access appears to be a distant goal in the eyes of our members working in Public Schools in NSW. They inform us that equitable funding and resourcing of support does not lead to equitable access at the point of delivery to students.

4.2 One member from far Western NSW pointed out that even when a specialist is available to assist one of her students (be that speech pathology, physiotherapy or other service) the logistics of accessing that resource places costs and strains on the service out of all proportion to the same process in a metropolitan or regional area.

4.3 The member spoke of the need for the student's family to take time off work to accompany their child several hours each way to access the service, the cost of travel and the effect this can have on the student. It is inconceivable to them how this process could be made equitable for remote students and their families without an increase in funding.

4.4 Similarly, the problems of hiring, supporting and maintaining support services in the regions are exponentially increased over those of recruitment in the city. Despite this, the PSA notes that there is an attempt to "normalise" the employment conditions for public servants in remote areas of the state by removing special provisions within the Awards structure. Remote area allowances, movement costs, and private motor vehicle reimbursement costs are just some of the conditions that the government has either flagged as under threat or have already begun to wind back.

4.5 Such an effort runs contrary to the reality of employing specialists in remote regions. Positions in regions are harder to fill and usually attract less experienced applicants. For there to be equitable access to resources, the quality of the resource also needs to be comparable. By not making an effort to recognise the challenges of working in regional or remote areas of the State, the Department sends the message it is prepared to accept a lesser quality of service for regional students.

4.6 Although the number of positions within support teams is calculated by a formula of students within the catchment area, this has a double negative impact on regional and remote areas. Lesser numbers in the regions leads to a smaller team and the inherent loss of flexibility and support amongst colleagues. Leave becomes harder to cover and professional development less effective in the long term. In addition, travel requirements increases the amount of time professionals spend out of contact with students or on active tasks. The tyranny of distance remains an issue that should be factored into the calculation of resources for regions.

5 'Local Schools, Local Decisions'

- 5.1 In the past decade two key inquiries have been undertaken within Australia on the issue of funding which relate to this inquiry. The first was the Productivity Commission's Disability Care and Support Report¹ (which recommended the introduction of the National Disability Insurance Scheme), the second was the Federal Government's Review of Funding for Schools (referred to as the Gonski Review) published in December 2011.
- 5.2 The National Disability Insurance Scheme (NDIS) was developed by the Productivity Commission to overcome the shortfall in services provided to people with disability in Australia. Focused on a system of individual assessment and tailoring of support, the NDIS attempts to ensure that people with a disability and their family become the focus of the system and have the flexibility to get the support they need.
- 5.3 At the same time, the Gonski Review² highlighted the correlation between funding and the ability of the child to learn within a school environment. A base funding level, with additional funding based on special needs, was established regardless of sector.
- 5.4 'Local Schools, Local Decisions' has the unique distinction of undermining the recommended outcomes of both these public policies for students with a disability or special needs.
- 5.5 Students who receive an individual assessment and are granted support, through the assistance of SLSO or other means, have lost control over their funding. Rather than have an SLSO employed with the funding attached to their assessment, under Local Schools, Local Decisions the money is given to the school which can decide how to spend the money. Although most schools have continued to use the money allocated as intended, our members already report that increasingly they are being diverted from the student who qualified for the support, to assisting other students or other tasks.
- 5.6 The concept of students with a disability being in charge of their own lives is nowhere more undermined than in a system where Principals are given the authority on how to spend their funding. Members also report that the financial pressures of this policy means that SLSO absences are not automatically being backfilled with casuals as has been the practice in the past.
- 5.7 The PSA sought confirmation from the Department that SLSO absences would be backfilled and received correspondence from the Department refusing to do so. That correspondence is attached as **Appendix B**. The employment of an SLSO is directly linked to the assessment and granting of funding to a school based on the needs of a student at the school. What this letter confirms is that Local Schools, Local Decisions abrogates that relationship and places the local Principal as the new arbiter of the needs of the student. In a system where funding is at a premium, the Department

¹ <http://www.pc.gov.au/inquiries/completed/disability-support/report>

² <https://docs.education.gov.au/system/files/doc/other/review-of-funding-for-schooling-final-report-dec-2011.pdf>

has created a system where that limited funding can be diverted without justification or accountability. Parents, who fight long and hard to gain the best possible outcome for their child, may not even know this support is being withdrawn from their child.

- 5.8 Our members also wish to point out that as much as they believe that funding belongs to the student and that they should be utilised on the task for which they are employed, they remain willing and capable of supporting the many students within the school environment who require their assistance but remain without funding under the current model. Many SLSOs deal with students currently that don't attract funding yet are just as deserving of support.
- 5.9 As was explained by the Productivity Commissions Inquiry into disability funding, the overall funding level is the most important determinant in assisting people with a disability. The lack of overall funding within the sector determines the way that the quotient of funding for individuals is funded but most importantly, also seems to affect the entry level of disadvantage needed to qualify for support. The funding model still allows many students to slip through the system without being granted support. The knock on for all students is that every unfunded student within the school system has an effect on the ability of teachers to focus on their other students. SLSOs can assist in this regard, many of them working with students who do not attract funding. Yet when the funding doesn't reflect the level of need, no amount of allocating the existing teaching and support resources will suffice.
- 5.10 As support staff, SLSOs have a symbiotic relationship with teachers within their school. What affects one, affects the other. It is for this reason that we share the following story told to the PSA, by a teacher at a NSW Public School.
- 5.11 Staff were informed by their Principal that the salary portion of the budget did not cover the actual leave entitlements of the staff but instead only covered an average of 6.5 days of leave per teacher position. This was now a defined, yearly provision to the school, and any variation from year to year would impact on the overall budget of the school. Such an admission makes it clear that the current funding of schools has the potential to undermine the basis of funding equality. A school which suffers bad luck with illness or other absences within its teaching staff will have their budget placed at stress. The PSA knows from experience that students will suffer as a result of this situation.
- 5.12 It is easy to see how it is now possible to have the needs of students affected by circumstances completely out of their control. The lack of accountability brought about by Local Schools, Local Decisions will affect all students.
- 5.13 Students with a disability or special need thrive when they have control and certainty in their learning environment. Unfortunately, SLSOs in schools, funded under integration programs, are all long term temporary employees. Some have been temporary employees for over 25 years. Although always insecure, the increased insecurity caused by the way that this funding is now subsumed within the local school budget means that increasingly, there is no security for our members and the students they work with.

- 5.14 Members are deeply concerned that students will be increasingly marginalised within their school environment due to the uncertainty caused by funding uncertainty and the flexibility inherent with the Local Schools, Local Decisions policy.
- 5.15 Well over half of all SLSO positions are temporary positions while over 99% of all positions are part time. Roughly one in four SLSO staff are stuck in a temporary position that will never be made permanent due to funding arrangements made as part of the decision to place increasing numbers of students with disabilities in mainstream schools.
- 5.16 The PSA submits that you cannot retain SLSOs and create an experienced and trained workforce if you cannot assure these workers of their long term financial security through job security when wages are at their current low rate.

6 Dignity for Students – Health procedures in a school setting

- 6.1 The PSA has been dealing more and more with the issue of medical procedures within school settings. Whereas previously medical issues affecting students were managed by trained medical professionals, the Department of Education has increasingly placed pressure on our members to perform these procedures.
- 6.2 In Schools for a Specific Purpose, members report that nursing resources are being withdrawn. The expectation appears to be that the NDIS will provide the additional funding to cover this withdrawal of specialist medical service. However the PSA is aware from our members interactions with parents that the NDIS does not consider assistance at schools as part of its remit and is refusing to take this into account during assessment. Instead, the tasks are now increasingly falling onto teachers and support staff unqualified in medical procedures.
- 6.3 Members have consistently reported to us about the concerns they have with this practice. Procedures that would require a qualification to perform in a hospital setting are being performed by untrained support staff within schools. These procedures include the administering of addictive and restricted medication and the performing of invasive actions such as tracheostomy suctioning, enteral feeding and clean intermittent catheterisations.
- 6.4 The Department has reacted to our concern by attempting to legitimise this activity. Following the failure of the PSA to agree to their actions they have responded by creating and advertising new positions in schools called School Learning Support Officers (Student Health Support). These positions are the subject of an ongoing dispute between the PSA and the Department which failed to consult and has advertised them despite not job evaluating the new position descriptions. A copy of the Statement of Duties for this position is attached as **Appendix C**.
- 6.5 These new positions would require applicants to perform a number of invasive and high risk medical procedures. The statement of duties also makes it clear that additional procedures to those listed would need to be performed if requested. In exchange for performing procedures that could expose our members to disciplinary action, litigation, and possible criminal charges the Department offers our members

additional money equivalent to three existing allowances: the first aid allowance, the health care procedures allowance and the proscribed medications allowance. This works out at an increase of just over one dollar an hour.

- 6.6 The PSA believes that the Department is acting appallingly with some of the most vulnerable people in our society. Children with a disability or special need are placed in their care yet are being treated to a lesser standard of medical care. Although it appears there is no legislation outlining qualifications for school staff to perform these functions, it is clear that this is because no one in government ever considered the Department of Education would treat students so appallingly.
- 6.7 Our colleagues in the NSWNMA inform us that such regulations do exist for medically trained staff, the Clinical Practising Guidelines for staff performing a tracheostomy in a clinical setting runs to almost 100 pages in length. They point out that certain types of trained staff could not perform some of the procedures being asked of SLSOs without supervision due to the dangers involved with them.
- 6.8 The NSWNMA also informed us that the medical outcomes of poorly performing some of these procedures is severe. The PSA has been informed that recently a student with a disability underwent a catheterisation in a hospital setting that went wrong. The outcome of this error by trained staff was that the child now suffers a further disability for the rest of their lives.
- 6.9 We are further informed that people who have an incorrectly inserted catheterisation are not always able to identify this and that staff are trained to identify the signs of infection, shock or the other conditions that may result. The idea that someone not medically trained could perform such a task regularly for students in a schools setting is too dangerous to contemplate.
- 6.10 Members also point out the conditions in which these procedures are expected to be performed. Far from the accredited clinical environment that nurses or other medical professionals may experience when carrying out these procedures, our members are expected to perform them in unhygienic settings, sometimes in full view of other students and/or staff.
- 6.11 The lack of dignity of having an invasive medical procedure performed on you in a classroom, storage cupboard, cloakroom or the school toilets cannot be overstated. Students with a disability or special need deserve to have their dignity respected and proper accommodation made for their circumstances.
- 6.12 The risks taken with a student's health and general wellbeing by placing their care in the hands of medically untrained staff, the PSA submits, is negligent and may well open the Department up to a charge of discrimination or other case of negligence.

7 Training support

- 7.1 The 2010 Inquiry focused on the role of SLSO by highlighting the lack of formal education or training for employees prior to taking on the role.

- 7.2 The PSA supported the finding of the Inquiry in this regard. As we noted at the time, no formal, centralised training course exists to educate SLSOs prior to their introduction to the classroom. In the same way, the training of the individual once they enter the classroom is down to their initiative in seeking out training, and in the local school leadership supporting them to do so.
- 7.3 Disappointingly, despite the recommendation emanating from the 2010 Inquiry and the availability of ITAB accredited courses that would prove useful, little has changed since that time. Some SLSOs have been well supported and receive both formal and informal instruction to ensure they can best assist their students; others are left to their own devices.
- 7.4 SLSOs also report to us that teacher positions that require special needs training are increasingly being filled with casual teachers without such qualifications. Such a situation can expose our members to an environment where the teacher is not trained to properly support their roles. Just as SLSOs demand the skills to do their jobs to the best of their ability, so we support that only trained Special needs teachers be placed in identified positions.
- 7.5 Given the inability of the Department of Education to ensure SLSOs receive formal and regulated support to assist their primary function, the current drive of the Department to force SLSOs to assist in the health needs of their students is careless at best, criminally negligent at worst.
- 7.6 The PSA supports the retention of trained medical professionals to deal with the health needs of students with a disability or special needs.

8 Summary

- 8.1 The PSA laments the waste of seven years since the last Inquiry into students with disability and special needs in schools. In that time, despite the recommendations of the previous Committee and the increasingly positive development of national policy around disabilities funding and school funding, the situation in NSW has stagnated due to inertia and Departmental penny pinching.
- 8.2 At a time when this Inquiry makes special note of equality in education regardless of location within NSW, the continued push of the Department to strip out incentives for staff to work in these locations continues to gather pace. Just as the government accepts that money spent on education adds an overall benefit to the state, the Department needs to realise that investment in salaries and conditions adds a benefit to the quality and flexibility of its workforce. If this committee is serious about overcoming the tyranny of distance in the provision of educational support to students in this state, they need to make a strong statement through support for staff who take on these roles.
- 8.3 Rather than attempt to deal with the issues of funding that were identified in the 2010 report on disability and special needs funding, Local Schools Local Decisions attempts to be an attempt by the Department of Education to devolve responsibility

for funding shortfalls onto local decision makers. In the process, it undermines the great strides made in public policy in providing people with disabilities with direct control over their own lives. Localised funding decisions affect the security of employment for the largely part time and temporary SLSO workforce adversely and in turn affect the educational outcomes of students with a disability or special needs.

- 8.4 Apart from the effect of financial policy on SLSOs, the shift in the core duties of our members is a troubling development. Encouraged by the Inquiry of 2010 to explore how to make better use of SLSOs in an Educational sense, the response of the Department has been to place additional tasks on these workers without providing even basic training. The increasing inclusion of medical responsibilities on the lowest paid of staff in direct contact with students shows an irresponsibility in dealing with workers and a disregard for the safety and health of the students in their care.
- 8.5 The formalisation of medical responsibilities within the SLSO position is careless at best, criminally negligent at worst. The PSA will not accept that the interests of students is in any way met by this practice. Only medically trained professionals should be entrusted with the medical needs of students in the care of the Department of Education.
- 8.6 SLSOs wish to contribute as much as they can to the students in their care and the educational environment of schools in NSW. In this day and age, the idea of a group of workers (over 13,000 employed in NSW Public Schools in 2016) working with children without any formal qualifications is a relic of a bygone era. To this end we implore this Committee to recommend that SLSOs be utilised for their primary purpose and supported in this role.