

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the State Education System in Victoria

Melbourne – Wednesday 12 June 2024

MEMBERS

Trung Luu – Chair

Ryan Batchelor – Deputy Chair

Michael Galea

Renee Heath

Joe McCracken

Rachel Payne

Aiv Puglielli

Lee Tarlamis

PARTICIPATING MEMBERS

Melina Bath

John Berger

Georgie Crozier

Moira Deeming

David Ettershank

Wendy Lovell

Sarah Mansfield

Richard Welch

WITNESS

Julie Phillips, Manager, Disability Discrimination Legal Service.

The DEPUTY CHAIR: Welcome back to the proceedings of the Legislative Council Legal and Social Issues Committee. I would like to welcome Julie Phillips from the Disability Discrimination Legal Service.

All evidence today is protected by parliamentary privilege as provided by the *Constitution Act* and the provisions of the Legislative Council standing orders. The information and the evidence you give us today is protected by law. You are protected against any action for what you say during the hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of the Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing, and transcripts will ultimately be made public and posted on the committee's website.

For the Hansard record, could you please state your name and the organisation you are appearing on behalf of.

Julie PHILLIPS: Yes. Julie Phillips, and I am the CEO of the Disability Discrimination Legal Service.

The DEPUTY CHAIR: Ms Phillips, would you like to make an opening statement?

Julie PHILLIPS: Yes. Thank you. Even though you have invited me as CEO of, I will call it, DDLS, because it is a mouthful, I am also chair of Disability Advocacy Victoria, which is a peak body for independent disability advocacy agencies. I have been working as a volunteer advocate for kids with disabilities in the education system for over 20 years. I can say that over the 20 years, despite many, many very damaging reports about education of kids with disabilities in Victoria, I have seen nothing change. Some things recently, I believe, have got a bit worse, particularly the violence against students with disabilities in schools, and particularly segregated schools but not contained to that. Even though you will hear of reforms and different changes to policies and procedures – which teachers are not required to read – if you look at the outcomes and the evidence, and I suppose working for a law firm I am always concentrating on those things, you will not see any change to the outcomes for kids with disabilities even though there has been some tweaking from time to time.

There is still no right to an Auslan interpreter for deaf kids. There is no right to functional communication if you are a non-speaking student. There is no right to protection from violence, and there are no directives to teachers who are faced with kids with severe behaviours as to what they must do. There are no resources, or not sufficient resources, for those schools to engage the people that could assist them, for example, with severe behaviours, so it is cheaper and easier just to use violence against those kids. We have children, particularly in segregated schools but not limited to them, for whom there is an assumption of non-capacity and so it is not worth teaching them. There is a misunderstanding and a lack of directives from the department about what evidence-based teaching is. It seems to me, from reading various department policies, that no-one quite knows what that means – it is not required. With many of the policies and procedures, because teachers are so busy and their option is to look at the website – and it is an option – most of them do not know what the guidance is anyway, but it is only guidance. I think I will leave it there – I have covered most things very briefly – and hand it back to you. Thank you.

The DEPUTY CHAIR: Thanks very much, Ms Phillips. Just by way of introduction, I am Ryan Batchelor, the Acting Chair of today's committee and a Member for Southern Metropolitan Region. We have got Mr McCracken from Western Victoria, Ms Bath from Eastern Victoria, Ms Payne from South-Eastern Metro, Mr Welch from North-Eastern Metro, and online we have got Mrs Deeming from Western Metro and Mr Puglielli from North-Eastern Metro as well, I think, when the screen turns over. There he is.

I might just start by going to the question of specialist schools. Obviously, you have got a position where you do not support their continued role in the system. Would that be fair?

Julie PHILLIPS: It is not so much my position as all the research is overwhelmingly in favour of inclusion, and I am concerned about, as I said, the levels of violence and babysitting in those schools. That probably propels me to think that even though these issues have been raised time and time again, they are not improving

the safety of kids and the teaching of kids. From a discrimination perspective and looking at what happens with adults when they get older, it is clearly more beneficial for kids to be raised with their peers, non-disabled and disabled, and I see that kids with disabilities will get a higher level of education and effort in mainstream schools because of their culture.

The DEPUTY CHAIR: Do you see any benefits from the current approach?

Julie PHILLIPS: You mean the segregation?

The DEPUTY CHAIR: Yes.

Julie PHILLIPS: No. I do see the advertising of segregated schools as, you know, 'We have therapists, we have this and we have that.' When you get into the detail – which I often do because I am involved in a lot of litigation and reading of thousands of documents – you actually see that some of these kids can get a higher level of therapy support in mainstream schools, because you have a consultative method at the segregated schools. Because they do not employ enough, for example, occupational therapists and speech therapists, they have a train-the-trainer model. They just talk to the teacher about how they should assist all of the kids in their class, all of whom, for example, if we are talking about speech therapy, have different levels of communication. Some are a little verbal, some use no speech at all. You do not have the one-to-one assistance in segregated schools because they say, 'We have' – and they do have – 'higher ratios.' You might have eight or nine kids in a class with two staff, but for kids who need intensive support – and that is what kids with the more profound disabilities need, not less, and to be treated like they cannot learn anything, but more – you often need one-to-one support to teach them how to communicate on their own device, a device or method picked for them by a speech pathologist. You need plans. They do not have them. There is no communication plan that I have ever seen in a segregated school. That does not mean they do not exist, but I have never seen one. But on the other hand, when you get into a mainstream school and you have an advocate, you can often get direct support one-to-one from an integration aide who is, hopefully, trained. So it actually can be superior.

You also do not seem to have the level of violence, and you have a culture which is more concentrating on teaching. I have listened to, for example, a tape recording of a whole day in a segregated school recently, and it was just kids playing music. There was one literacy lesson, which took 10 seconds, and it was, 'Here is the literacy. We're going to do literacy. C-A-T, cat'. At least they used phonics. That was it; everything else was playing. So that is a concern, because these kids need more help, not less.

The DEPUTY CHAIR: Thanks very much. Mr McCracken.

Joe McCracken: Thank you. I was really interested when you talked about outcomes and the fact that over the last X amount of years there has been a lot of talk but really not much movement. Can you delve into that, and particularly the areas that you have been advocating for, about why there has been no shift?

Julie PHILLIPS: I think it all comes from the top, and the Department of Education has a culture which is, particularly in response to complaints, very aggressive. It is a culture that is 'You will not be telling us what to do'. They have a very strong legal department, and that legal department gets involved in all complaints. It is called the complex matters team. Everything is looked upon through a legal lens of liability instead of assisting the children.

I think 2012 saw the most comprehensive educational report done by the Victorian Equal Opportunity and Human Rights Commission, so there is no excuse why many of those things have not changed. Why would you not agree with the Commission and the Office of the Public Advocate and not prohibit seclusion, when human rights groups are saying that you should and that it has no positive outcome for the child whatsoever? It is a culture, and I believe that something needs to happen at the top of the Department of Education. I know many teachers who do speak to me would agree with me as well. That is the only explanation there can possibly be, because you cannot have report after report, year after year, criticising the same things – and restrictive practices and violence are some of them. I mean, there is no money for behavioural support. The department will defend vigorously – and it is doing so as we speak – the terrible physical treatment of kids with disabilities. Until they stop defending that and saying, 'No, this is wrong. We have to do things a different way,' it will continue.

If you look at the stats on restraint and seclusion, they are up to nearly 2000 incidents in 2022. That is the last year. Nothing is being done about it. There is no change in approach.

Joe McCracken: Okay. So are you saying that anytime an issue is raised around these sorts of matters with the department they tend to get quite defensive and legalistic, I think you might have said –

Julie Phillips: Absolutely.

Joe McCracken: because they are concerned, as you say, more about liability than the wellbeing of a young person in their care?

Julie Phillips: Yes. The problem that Jeff Kennett left us with is the autonomy of schools, and until the you-know-what hits the fan and there is a legal case, principals are allowed to do whatever they want. And because you do not have to read policies and procedures and it is up to you – for example, how to teach someone to read – and it does not matter whether it is the most discredited program there is, if the principal wants to do that, they can. So that is the other tension that there is and why the school will be allowed, to an extent, to do whatever they want. And then when complaints occur you get involved in some machinery that will never stop and ironically usually leads to a legal complaint because it is so aggressive.

Joe McCracken: I think my time is up, but thanks very much.

Julie Phillips: Thank you.

The Deputy Chair: Mr Puglielli.

Aiv Puglielli: Thank you. Good morning. Just going through your submission, looking at points 11 and 12 on I think it is page 3, you state that:

We regard the current numbers of students with disabilities annually being restrained and locked up in schools, a state emergency.

And you:

... regard the current absence of guidelines in relation to where a child in a Victorian school can be locked up, and under what physical conditions, as reckless.

Could you expand a bit more on what is going on across the state and what we need to do to fix it?

Julie Phillips: Sure. I will give you a case study which I am working on now as an individual education advocate. A young boy was restrained from his second week in prep and for the next four years – no intensive behavioural assistance was provided, just restraint after restraint. We know, and the research tells us, that physical restraint is traumatising. You can have injuries, and certainly in other western countries children have been killed. I know adults have been killed in Victoria by chest compression involving restraint. So the fact that this is still going on as an alternative to intensive behavioural support when the risks are so high – the young child of course is completely traumatised after four years of that, and there is no change and the department are defending that vigorously now – to me is an emergency, because children do not go to school to be at risk of injury and death, and often reasonable adjustments and supports would have averted the behaviours. Certainly intensive behaviour support, the science tells us, will address those behaviours, but it is not done. So there are conscious choices being made to subject kids to violence instead of supporting them. To my mind, the first time a child dies – and certainly they have come close to it in terms of the clients that I have worked with saying they cannot breathe, their chest is being compressed – then it will be too late to have a look at those statistics and wonder why something was not done. It is inexplicable why something was not done, and someone needs to get involved and look at the whole problem of violence against these kids and do something about it.

Aiv Puglielli: With regard to what is happening now and that ongoing issue, what do you think it comes from? What is underpinning the current practice that is occurring in schools?

Julie Phillips: Some of it is definitely resourcing – not that the State of Victoria and the Department of Education do not have the money; it is just spent on legal stuff. But let us look at a small school in the country and their budget and the fact that often they will not even have sufficient funding for simply an integration aide for a child who might have multiple neurodivergent disabilities. So when you need to engage a qualified behaviour analyst on top of that for some intensive assistance, the easier thing to do is just use violence with

them. It is cheap. Anyone can do it. I like to think that it is not because there are some teachers in the system that have a problem; I would like to think that all of them, if they had a choice between getting professional assistance to fix the problem and using violence – and they are hurt themselves. WorkCover claims – that is an extraordinary cost as well. Money should be taken from there and put into the kids.

So I think it is resources and it is also a lack of directives. There are no directives from the department about what you will do, what you must do, such as a functional behaviour assessment if a kid has behaviours of concern. It is a free-for-all, as it is for most things at school, in that anyone can decide, but you do not have a decision or a choice when you do not have the money to do things.

Aiv PUGLIELLI: Thank you.

The DEPUTY CHAIR: Thanks very much, Mr Puglielli. Ms Bath.

Melina BATH: Thank you. Thank you very much for being here, Julie. Is there a philosophy of nepotism in the education department?

Julie PHILLIPS: I have seen it. It is not the biggest problem, but in terms of a non-literal interpretation of the word, as you found in the Beaumaris inquiry, there is a protection all down the road of teachers and aides over children. So there is a loyalty in that the department protects its own, except for those whistleblowers who stand up and say what is going on.

Melina BATH: What happens to whistleblowers from the department's point of view, from your experience?

Julie PHILLIPS: Well, look, a number of them have been and are in touch with me. I suppose that once you have put your hand up to expose your colleagues and abuse against kids with disabilities, you are forced out; you are ostracised. The legal department comes in, you often end up on WorkCover and you are out.

Melina BATH: You are disbelieved, or you are actively discouraged?

Julie PHILLIPS: I think that they are believed but it is not a welcome thing to do to highlight the inadequacies and whistle-blow.

Melina BATH: Julie, I will go back 10 years – I will pick 10 years; you can give me another date. How many legal cases – and you might have to take this on notice – have you worked on in terms of defending the rights of parents of children with disabilities? Have you worked on them pro bono? And roughly how many have been paid out by the education system?

Julie PHILLIPS: I will answer that question by telling you today, as an individual who is a non-lawyer but can help assist people at VCAT, I would probably have discrimination cases on behalf of about 20 families at this point in time. In terms of the Disability Discrimination Legal Service, we would probably have four or five current at any one time. I would say nearly all of them are paid out. However, the larger amount of money, which would amount to millions every year, would be –

Melina BATH: In legal costs.

Julie PHILLIPS: That is right. And the stringing out of legal cases bumps that up.

Melina BATH: Do you agree with some of the comments from the CCYP about the importance of child safe standards being adhered to? I will flip that: is that something that you believe in or agree with?

Julie PHILLIPS: Oh, sure. I mean, they are not.

Melina BATH: Are there breaches of child safe standards in, we will say, specialist schools?

Julie PHILLIPS: Certainly. I mean, all the violence is a breach of the standards.

Melina BATH: Yes. And what do you think is the ultimate lack of willingness – and it is in your submission, recommendation 8 – of the education department to learn and evolve? What is the resistance here?

Julie PHILLIPS: Again, I believe it is a cultural thing. I do not see the culture having changed in the last 20 years. And because it is so aggressive, it is not child focused and it is not trauma focused, it is just ‘We will do what we want to do’.

Melina BATH: So how would you fix that? You might have to take it on notice, because my time is up.

Julie PHILLIPS: I think you need a secretary who has not come from the public service, who has perhaps a human rights background or a community legal centre background, whose focus is the children and who is willing to work with advocates and organisations such as mine, rather than against them.

The DEPUTY CHAIR: Thank you, Ms Bath. Ms Payne.

Rachel PAYNE: Thank you, Chair. Thank you, Julie, for coming in and presenting to us today. I was really curious by your statement in your opening remarks around children having no rights to, you listed, Auslan, functional communication and protection from violence, which seem like basic rights to have access to in education. I guess I have got two parts to that question. Is it up to parents, then, to advocate on behalf of their children to have those accesses? And is it something that is looked at case by case, or is there opportunity there to have the rights of the child enshrined either in legislation or in a process going forward?

Julie PHILLIPS: In the States they have a bill of communication rights, I believe. I think that is absolutely important. I think the Charter should be its own cause of action – in other words, you should be able to make a complaint under the Charter without having it piggyback on something else. I think that we need to look overseas at the IDEA, the American disability and education law. We need to get rid of the Standards, although that is not something that Victorians can do. The reason I mention the IDEA is because it is very explicit. It says, for example, ‘If a child is suspended for behaviours, you must convene this group. Here’s who may attend. You must do a functional behaviour assessment.’ You must ensure that someone has a device of their choice and is learning functional communication for so many hours per week and that there is a right to an Auslan interpreter. I think those should be enshrined so those arguments just do not have to go on for years, sometimes.

Rachel PAYNE: And I guess, if I have got time, another thing I was curious about, just based on your 20 years of experience and the fact that you have seen violence as a response to young people in specialised schools, is: what happens to those young people as they become older and become adults?

Julie PHILLIPS: That is a really good question. I have one young man who has been in a psych ward now for about two months, and he has autism, a severe language disorder – no intellectual disability – and a specific learning disorder. He went to three schools. At the first one he was physically restrained repeatedly. At the second one he just was not taught. They were two segregated schools. By the time his parents thought, ‘We need to get him into mainstream,’ he was so many years behind that he became suicidal. He remembers what happened to him when he was locked in a room – falsely imprisoned and physically restrained two or three times a day – and he cannot cope with what has occurred. And he is no good.

Rachel PAYNE: Thank you for answering that one. I will leave it with that one, Chair. Thank you.

The DEPUTY CHAIR: Okay. Mr Welch.

Richard WELCH: Thank you, Chair. Thank you, Julie, for coming in. This is really a question from ignorance: when you talk about violence and restraint, is there a typical scenario? If someone is being restrained and isolated three times a day, what sort of scenario precipitates that? Why would that be happening?

Julie PHILLIPS: Firstly, we know that punitive measures like violence actually make kids worse. It is a bit like suspension. You start the violence cycle; the behaviours will get worse. You do not bring in the behaviour specialists. So, for example, a lack of communication causes behaviours of concern. It is probably common sense, but the research says it also. So if you are not going to teach someone how to communicate, they will use their behaviours to say, ‘No, I don’t want to do this, I am in pain,’ et cetera. Also, for example, kids with autism might have sensory overload and need simple things like less noise or less visuals going on in the classroom. There are a lot of proactive, preventative supports that if withheld will cause children to become dysregulated and have – you have probably heard of the expression – meltdowns, where kids are so overwhelmed they just lose control. So the idea is that you can avoid all of these things – probably not 100 per cent of them, depending

on the disabilities and combination the child has – if you just put in supports and do a functional behaviour assessment to find out why the child is getting those behaviours, in other words why they are occurring, and you address them that way. That does not happen. Teachers are expected to do these sorts of things themselves – write behaviour plans, be behaviour analysts and do things that they are not trained for and that they should not be doing. It just adds one more layer to their basic duties. So there are a whole lot of reasons why kids show behaviours, and as I said, if we go back to the resource issue and the fact that they are not supported, then we get the violence.

Richard WELCH: In Victoria we have currently got a teacher shortage of, I think, 1500 teachers right now. It could be higher. It is estimated to be 3000 to 4000 over the next three, four years. That cannot help the situation, because you would have more temporary teachers in classrooms, and there would be less continuity. But leading on actually to the other point, if they going to have other sorts of support – Auslan and all these other kinds of supports – is there the human resource in the pipeline that could actually fill the number of roles required? Do we have the people available?

Julie PHILLIPS: Well, this is an interesting cycle and link as well, because if you are a teacher and you are having to restrain a child every day and you are getting hurt in the process, that is not fun. I know I have read a lot of testimonies from teachers who say, ‘It’s too hard. I’m not supported. I’m out of here.’ If you start supporting the teachers more in the classroom, you will have more coming back into the system and more people wanting to be teachers. At the moment teaching is associated with very high workloads, WorkCover claims and all of these things. Why would you want to be one? You have to look at the system as a whole, because at the moment you could say, ‘Well, yeah, we don’t have these things.’ But of course an Auslan interpreter is an extra person. You need to look at the supports for teaching Auslan interpreters and training. These are all issues which have been raised repeatedly over 20 years about workforce. It is actually about someone just addressing what has already been recommended so we can have a really healthy workforce.

Richard WELCH: Thanks, Julie. Thank you, Chair.

The DEPUTY CHAIR: Thanks, Mr Welch. Ms Deeming.

Moira DEEMING: Thanks, Chair. Thanks for that presentation. That is very disturbing. I mean, what you are saying just sounds like straight-up child abuse. When you hear it said like that, it is something that you would imagine you would call the police over. On the other hand, I know a whole bunch of families with disabled children and I know a whole bunch of my other colleagues were teachers in disabled schools, and like you said, the ones who care very, very much do not like any of those kinds of things. They have not seen what you described, but yes, they have had scratches up their arms. Often I have found that the families and the teachers all understand that it is an uncomfortable and unattractive situation sometimes when you have to manage a child who is a teenager who has an intellectual disability per se or something like that, and so they understand the complexity of it. But what you are saying just sounds like inexcusable child abuse. That just sounds way across the line. You know, you hear about these stories in the news of kids put in cages and things like that. Are you telling me that some of these practices, because of the lack of directives and the lack of explicit rules, are legal in some sense in our schools?

Julie PHILLIPS: Look, they are probably not legal, but Victoria Police will not get involved in schools. But there is one interesting claim at VCAT at the moment in relation to the Department’s refusal to independently investigate allegations of abuse at Latrobe SDS, at Southern Autistic, at Marnebek and Jackson School, and the department are trying to thwart that as hard as they can. I cannot say whether it is legal or not, except I often use an example of: what if it was you and me, or what if it was a mental health patient in a hospital and you had a choice to treat them in a nonviolent way – it could be through medication if we are talking about mental health, it could just be supports – but instead you chose to physically restrain them and lock them up? Now, to me that is child abuse when you have a choice like that and you consciously choose to go a particular way. The fact that the individual teachers do not have the resources I suppose you can understand. However, there comes a time when individuals and teachers have to say, ‘We need to formally take this as a school to the Department. It’s wrong. We’re all getting hurt. The teachers and kids are being traumatised. We have to stand up about it.’ But because the Department is so scary and these teachers watch what happens to others, they do not tend to do that; they tend to just leave.

Moira DEEMING: And then the children are not helped anyway.

Julie PHILLIPS: Well, no.

Moira DEEMING: Yes, that is awful. I cannot believe it is not illegal. I cannot believe the police are not investigating it, and I cannot believe the department are so aggressive and bad at it and they have not taken these things on. You have just made a whole area of policy crystal clear to us. Thank you so much. I hope that our committee can get change on this. That is outrageous. Thank you.

Julie PHILLIPS: I hope so.

The DEPUTY CHAIR: Thank you, Mrs Deeming. Ms Phillips, our time for this session has concluded. Thank you so much for coming in today and giving us your evidence.

Julie PHILLIPS: You are very welcome.

The DEPUTY CHAIR: It was obviously very heartfelt. We will now suspend the broadcast.

Witness withdrew.