

9 October 2020

NSW Department of Education  
By email:  
[behaviour.strategy@nsw.edu.au](mailto:behaviour.strategy@nsw.edu.au)

Dear

### **Draft Student Behaviour Strategy**

Legal Aid NSW welcomes the opportunity to provide a submission to the NSW Department of Education's consultation on its draft Student Behaviour Strategy (**Strategy**). We acknowledge our ongoing engagement with the Department to help inform its current review of student discipline and suspension policies and procedures.

#### **Legal Aid NSW's services**

Legal Aid NSW is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We assist with legal problems through a comprehensive suite of services across criminal, family and civil law.

We represent many children and young people charged with criminal offences who have been suspended, expelled or are not attending school. Most clients of our Children's Civil Law Service, which provides a multi-disciplinary wrap-around service to address civil legal issues faced by highly disadvantaged children in the criminal justice system, are not attending school.<sup>1</sup>

Research has demonstrated the links between school suspensions and the interaction of children and young people with the criminal justice system.<sup>2</sup> There is also a strong

---

<sup>1</sup> In November 2018, the President of the NSW Children's Court stated that roughly 40 per cent of children appearing in the Court's criminal jurisdiction were not attending school: Judge Peter Johnstone, President of the Children's Court, "Education issues in the Children's Court", *One year on: ACWA Education Roundtable* (27 November 2018).

<sup>2</sup> See NSW Advocate for Children and Young People, *What children and young people in juvenile justice centres have to say* (Report, October 2019); Sheryl A Hemphill, David J Broderick and Jessica A Heerde, Australian Institute of Criminology, *Positive Associations Between School Suspension and*

relationship between being suspended or expelled from school and high legal aid service use. A Legal Aid NSW study in June 2013 found that 82 per cent of the organisation's highest service users had, at one time, been excluded, suspended or expelled from school. Of those high service users who had more than 101 contacts with legal aid services, 93 per cent had been expelled or suspended from school.<sup>3</sup>

We provide legal services – specifically, advice, minor assistance, extended legal assistance and grants of aid – to assist young people, as well as parents and carers of children, who are suspended, expelled or otherwise excluded from school.

## **Draft Student Behaviour Strategy**

### Suspensions, expulsions and other exclusionary measures

Legal Aid NSW welcomes the statement in the draft Strategy that supporting student behaviour involves a preventive, student-centred and positive approach. In particular, we support the position in the draft Strategy to minimise the use of suspension to avoid the cycle of exclusion and school disengagement. The draft Strategy acknowledges that suspension is not an effective mechanism to reduce disruptive behaviour – rather, it has been linked to the increased recurrence of problem behaviour. It also acknowledges that suspension has been linked to a range of negative outcomes for children and young people, including lower school retention rates, increased likelihood of involvement with the youth justice system, and poor long-term health and wellbeing outcomes. It is encouraging that, according to the draft Strategy, the new Policy will identify a range of interventions and support options, including in-school suspension and alternative measures to suspension.

We submit that the new Strategy and Student Behaviour Policy (**Policy**) should provide clear guidance on the purpose and utility of suspensions, and where suspensions sit in relation to other measures that a school might use to address the behaviour of students. In light of the ineffectiveness of suspension as a behaviour management tool and the many negative outcomes associated with it, we recommend that the new Strategy and Policy require that suspension and expulsion may be used only as a last resort and in specified exceptional circumstances (e.g. for a student or staff member's immediate protection). The new Strategy and Policy should provide clarity and guidance on the obligations of a school to facilitate in-school suspension and alternative measures to suspension.

We consider that existing provisions in the *Suspension and Expulsion of School Students Procedures* that require a school principal to suspend a student immediately

---

*Student Problem Behaviour: Recent Australian Findings* (Trends & Issues in Crimes and Criminal Justice No 531, June 2017).

<sup>3</sup> *High service users at Legal Aid NSW* analysed the 50 most frequent users of legal aid services between July 2005 and June 2010. Eighty per cent of the most frequent users were children and young people and 82 per cent had their first contact with Legal Aid NSW before they were aged 14.

in certain circumstances<sup>4</sup> are inconsistent with the Strategy's approach to supporting positive student behaviour, learning and wellbeing, and should be discontinued.

The new Strategy and Policy should address the use of rolling or back-to-back suspensions and other exclusionary practices (e.g. part-day/partial exemptions from attendance and exemptions from enrolment). In our view, the use of these measures as a behaviour management strategy, particularly in response to challenging behaviour from students with developmental disabilities, is also inconsistent with the Strategy's approach and should be prohibited.

We query the availability of suspension as a measure for younger children, particularly children in Years K to 2. While we note that key intended changes to the Policy include fewer grounds for suspension for Years K to 2, given their young age and vulnerability and the potential impacts on their development, we consider that the new Strategy and Policy should clarify the rationale for the availability of suspension for this cohort.

#### Support services

We submit that the new Strategy should refer to the importance of supporting the students' families upon notice of suspension or expulsion. We recommend that the new Policy include a minimum requirement that schools provide families the telephone and contact numbers for support services in the local area upon notice of suspension. This should include family support services, contact information for the National Disability Insurance Agency, and Legal Aid NSW's intake LawAccess number on 1300 888 529 for advice about their legal rights.

The new Policy should also provide that schools take into account the literacy levels of parents when giving notice of, or otherwise communicating about, suspension or expulsion, to ensure that parents understand the matter.

#### Review

We recommend that a review be undertaken of the new Strategy and policy framework within six to 12 months after their implementation, and that appropriate data be collected before and after implementation to ensure the review is evidence-based.

#### **Concerns about suspension and other exclusionary practices**

Through our services and community engagement, we hear of schools—particularly in regional areas—using suspensions and partial exemptions routinely and repeatedly in the case of Aboriginal and Torres Strait Islander students and students with developmental disabilities (particularly Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder). We are also aware of schools using suspensions and partial exemptions in cases of primary students as young as six.

---

<sup>4</sup> NSW Department of Education, *Suspension and Expulsion of School Students Procedures* (2011) [6.1.3] – [6.1.4].

Drawing on the casework experience of our solicitors, Legal Aid NSW is concerned about the following issues:

- Learning and behaviour supports that could assist students are not always reviewed nor improved during suspension periods and suspensions often result in students falling further behind, disengaging and further acting out.
- There are instances of parents not being formally informed of suspensions, not understanding processes or being offered resolution meetings, and being banned from school premises when seeking to challenge suspensions.
- There is a current lack of school support and supervision available to students during suspensions and a lack of alternative education options for students who are expelled, particularly in remote locations.
- Disadvantaged children and young people with complex needs are more likely to be excluded from NSW government schools and experience the detrimental impacts that flow from this.
- There is a critical gap in education support services for children and young people appearing before the Children's Court and without such support, many are unlikely to re-engage with education. We note that attending school is a protective feature for children and young people appearing at the Children's Court on criminal charges. In our experience, a magistrate is usually more assured that the child or young person will not reoffend again if they are attending school regularly, which is not possible if they have been suspended or excluded.

### **Areas for improvement**

We suggest that, in developing the new Strategy and policy framework and other key reforms in relation to student behaviour, the NSW Department of Education consider the following measures to reduce the number of disadvantaged students excluded from school and engaging with the criminal justice system:

1. Improve schools' engagement with students and parents to find alternatives to suspension and exclusion wherever possible that focus on inclusion and promoting young people's engagement with education and training.
2. Improve the information, support and fairness schools provide to students and their families in school discipline procedures. This includes ensuring awareness of, and access to, effective internal resolution and review processes; and facilitating appropriate access to support during in-school interviews.
3. Improve supervision and support for suspended or excluded students, including by producing guidelines on referrals to support services (e.g. to Youth on Track) and maintaining school engagement during suspensions (e.g. through improving guidance on using in-school suspensions and connecting students with appropriate external programs, suspension centres or support agencies).

4. Improve the collection, monitoring, analysis and reporting of data on suspensions, expulsions and other exclusionary measures (e.g. partial exemptions) to better understand and respond to the disproportionate impacts on disadvantaged students.
5. Support children and young people in the criminal justice system to re-engage with education.

Thank you again for the opportunity to provide a submission to the NSW Department of Education's consultation. If you have any questions about this submission, please contact Meagan Lee, Senior Law Reform Officer, at

Yours sincerely

Brendan Thomas  
**Chief Executive Officer**