



Executive Summary

Confidential Supplementary Investigation Report

Bendigo Special Developmental School

30 November 2017

1. INTRODUCTION

This Executive Summary has been prepared at the request of the Department of Education and Training (**Department**).

The Executive Summary sets out the key information and findings contained in the Privileged & Confidential Supplementary Investigation Report provided by Justitia Lawyers & Consultants and the independent advisor (**Investigation Team**) to the Department (**Supplementary Investigation Report**).

Justitia is an employment and labour relations law firm that regularly conducts workplace investigations into allegations of misconduct. The independent advisor is an experienced psychologist who has worked extensively with special development and special needs schools, as well as with children with intellectual disabilities.

At the Department's request, the Executive Summary, like the Privileged & Confidential Supplementary Investigation Report, does not identify complainants, respondents, witnesses or students mentioned in the allegations by name. The purpose of de-identification is to protect the identity of those involved in the Supplementary Investigation.

2. INVESTIGATION PROCESS

The Supplementary Investigation followed an investigation conducted by Justitia into the present risk of danger to students at Bendigo Special Development School (**Bendigo SDS**) in late October 2015 (**Substantive Investigation**), following receipt by the Department of new information regarding historical allegations at Bendigo SDS. The new information relates to allegations regarding the treatment of students with disabilities at Bendigo SDS during the period 2003 to 2011.

In October 2016, the Department engaged the Investigation Team to conduct the Supplementary Investigation. The Investigation Team was asked to investigate new allegations arising out of the historical information received by the Department, as well as other new information provided to the Department or directly to the Investigation Team during the course of the Supplementary Investigation. The Investigation Team conducted the investigation during October 2016 – January 2017.

In consultation with three complainants, the Investigation Team prepared a list of allegations against current members of Bendigo SDS staff. In total, there were 11 allegations in the list of

allegations. Five of the allegations were general allegations in respect of which no specific respondent was named.

3. OTHER TERMS USED IN THIS EXECUTIVE SUMMARY

The Investigation Team also notes the use of the following specific terms in the proceeding sections of this report.

Alternative/alternate play areas: There were previously outdoor areas in the playground at Bendigo SDS that measured around four to six square meters and that were accessible via gates with fasteners on them. They contained a bench. Some students were able to operate these fasteners whereas others were not. On occasion, students were guided into these alternative play areas during recess if their behaviour posed a risk or threat to other students and/or staff. The evidence suggests that this was done by several staff helping to guide the student into the area. Some students were able to enter and exit these areas of their own volition, whereas others were not. These smaller areas no longer exist at Bendigo SDS, however, there are currently a number of outdoor play areas that are fenced off or separated by pool fencing at the school. The Investigation Team observed these on its visit to the school on 23 November 2016. These areas are large, grassy areas, many of which contain trampolines and other play and/or sensory based equipment. The outdoor play areas form part of the playground at Bendigo SDS and are intended to keep students in one particular area where they can be observed by teachers and ES staff. The term 'alternative play area' is still used by Bendigo SDS staff, however its current meaning refers to any large, fenced off play area separate from where other students are playing. Students are able to enter and exit the current alternative play areas of their own volition.

BSPs: Behaviour support plans (formerly called 'behaviour management plans') are shortened to the acronym BSPs for the purpose of this report. The Department defines a BSP on its website as:

'...a school-based document designed to assist individual students who have experienced harm, are at risk of harm, or have caused harm to others. Targeted plans can be developed for students who have been diagnosed with severe behaviour disorders; students who have bullied others; students who have been bullied; students who require additional assistance because they display difficult, challenging or disruptive behaviours; as well as students who can benefit from additional wellbeing support.'

Some Bendigo SDS students currently have or have previously had BSPs. While not every student at Bendigo SDS requires a BSP, it is usual for students at special schools who

experience behavioural issues to have one. BSPs, if completed properly, ought to provide a thorough description of a student's triggers, warning signs (i.e. signs that the student is building up to a meltdown), de-escalation techniques and intervention strategies. Throughout the course of the Supplementary Investigation, the Investigation Team took an interest in the existence or absence of BSPs for particular students, as well as the contents of BSPs, where they existed.

Cubby: The 'high needs playground structure allegations' refer to a structure in the 'wheelchair yard' (the proper name of which is the 'high needs playground'). The structure in these allegations is described as a 'cubby' which was located close to the wheelchair swing in the high needs playground. This cubby was open and its purpose was to provide a space for non-ambulant students in wheelchairs to perform standing transfers. Given that the structure was open, it was not possible to 'lock' anyone into the structure at that time. Students could enter and exit the cubby of their own volition. At some point, however, the cubby was gated and was used for storage of playground equipment. Students were not allowed in the structure after this occurred and efforts were made by Bendigo SDS staff to prevent students from entering that area. The cubby in this form was considered during the course of the Substantive Investigation. At all times, it has been possible to lock the fences around the high needs playground, which is a much larger area.

Pens: A number of allegations refer to indoor 'pens' or 'cages' as these were the terms used by the complainants to describe the alleged indoor structures in which students at Bendigo SDS were allegedly placed. In discussing its findings in relation to the allegations, the Investigation Team prefers the term 'pens', both because it is the word a number of respondents and witnesses used to describe the structures and because it is a more accurate description of the structures, based on the evidence received. Students could enter and exit the pens in question of their own volition. The Oxford Dictionary defines a 'pen' as 'a small enclosure in which someone or something can be confined' and uses the example of a baby in a pen. Indeed, one of the alleged structures (referred to in the first 'indoor seclusion allegation') was a children's playpen. On the other hand, the Oxford Dictionary defines a 'cage' as 'a structure of bars or wires in which birds or other animals are confined' or 'a prison cell or camp'. In addition to being inaccurate, the Investigation Team considers the word 'cage' to be a more provocative word. The Investigation Team therefore refers to the alleged structures in the 'indoor seclusion allegations' as 'pens'. The 'pen' referred to in the 'outdoor pen allegation' is referred to by the Investigation Team as an 'alternative play area' (see above).

Safe room: The safe room was investigated as part of the Substantive Investigation. During the Substantive Investigation, the safe room was sometimes referred to as the 'wooden cubby

house'. It was purpose built for a particular student during the time Mr Honey was Principal of Bendigo SDS. The safe room was an enclosed wooden structure. It had no windows and was secured with a bolt, meaning that students placed inside could not enter or exit the safe room of their own volition. There was a gap between the walls and the roof of the safe room through which students who were placed inside could see. The Substantive Investigation found that students who were placed in the safe room were supervised at all times, either by a teacher who was observing from just outside the safe room or via a camera that was installed in the safe room at a later stage. Footage from the camera was relayed to the student's classroom so that the student's teacher could monitor it.

4. ALLEGATIONS

The Investigation Team investigated the following allegations:

Prone restraint allegations: Between 2003 and 2011, at least two days out of every three, teaching aides would subject a student to prone restraint; and during the period in which one student was at Bendigo SDS, he was subjected to prone restraint.

Other restraint allegations: Between 2003 and 2011, a teacher sat on students; and in 2013, a teacher pinned a student on the ground by sitting on top of him and pinning his shoulders down, put her face in close proximity to his and spat in his face.

Indoor seclusion allegations: Between 2003 and 2011, a student was often placed in indoor cages or pens where he spent a significant amount of time. These cages or pens had fasteners that meant that the student could not get out; and in 2006, a teacher placed a student in a cage or pen inside a classroom for the purpose of behaviour control. This student did not suffer from seizures.

Outdoor pen allegation: Between 2003 and 2011, three students were escorted into outdoor pens where they were left for considerable amounts of time. The students were often under-monitored during this time.

Safe room allegation: Later Years staff placed three students (not mentioned in the Substantive Investigation) in the structure referred to in the Substantive Investigation as the 'safe room' or the 'cubby house'.

High needs playground structure allegations: In 2008, a teacher put a student, who was a student of around 13 years old at the time, in a structure with a pool fenced gate and sloping roof located in the wheelchair yard. The student was often restrained by two staff members

until he was locked into the structure, where he would sometimes remain for around two hours. No one monitored the student while he was in the structure; and in or around 2008, another student was also locked into the structure in the wheelchair yard. He was usually restrained by one or two staff twisting his arm up his back.

Dishonesty/concealment allegation: Two teachers were dishonest in stating to a parent that a teacher of a particular name had never worked at Bendigo SDS. The teachers' dishonesty about this fact was intended to deter the parent's complaint about the teacher's conduct towards her son.

5. INVESTIGATION FINDINGS

The Investigation Team made factual findings on the basis of the balance of probabilities. Justitia was ultimately responsible for making factual findings, with input and advice from the independent advisor. The following terms are used to describe the Investigation Team's findings:

Substantiated: If the Investigation Team was satisfied there was sufficient evidence to substantiate an allegation (i.e. were satisfied on the basis of the available evidence that it was more likely than not that the alleged conduct occurred), the Investigation Team made a finding of 'substantiated'.

Not substantiated: If the Investigation Team was satisfied that there was sufficient evidence to find an allegation not substantiated (i.e. were satisfied on the basis of the available evidence that it was more likely than not that the alleged conduct did not occur), the Investigation Team made a finding of 'not substantiated'.

Partially substantiated: If the Investigation Team was satisfied that there was sufficient evidence to find that some aspects of an allegation were substantiated (i.e. were satisfied on the basis of the available evidence that it was more likely than not that parts but not all of the alleged conduct occurred), the Investigation Team made a finding of 'partially substantiated'.

Not able to be substantiated: If the Investigation Team was not satisfied that there was sufficient evidence to make a finding that an allegation was substantiated or not substantiated (i.e. there was insufficient evidence to determine whether it was more likely than not that the alleged conduct occurred), the Investigation Team made a finding of 'not able to be substantiated'.

Of the 11 allegations investigated by the Investigation Team, one was found to be substantiated, three were found to be partially substantiated, five were found not substantiated and two were found not able to be substantiated.

6. PRONE RESTRAINT ALLEGATIONS: FINDINGS

Between 2003 and 2011, at least two days out of every three, teaching aides would subject a student to prone restraint – not substantiated

The Investigation Team found no evidence that prone restraint practices had been used at Bendigo SDS during the investigation period, nor that they had been used specifically on the student. Credible evidence was provided as to the methods used when the student experienced a 'meltdown', none of which involved the use of prone restraint, or indeed restraint of any kind. Rather, the methods used were to lead the student outside, which usually worked to calm him down, or to guide other students to move away from him if necessary.

The Independent Advisor notes that there was mention of the student having significant sensory related behaviours of concern (such as sensory overstimulation), during which times he would be 'guided' or taken to a quiet area away from other students (such as to the sensory room). The student was reportedly monitored by a staff member at all times. The mention of staff 'guiding' or 'escorting' a student whilst they are engaged in behaviours of concern and/or in a generally heightened emotional and behavioural state raises concerns. This is because physically guiding or escorting a student whilst they are behaviourally and emotionally heightened raises possible questions of how this process was conducted (for instance, whether physical force or holds were used). While there is insufficient evidence to ascertain this, best practice principles are to ensure that staff are appropriately trained in how to use the least restrictive means to assist a student to another area and the process or means to be used.

Physical restraint should not be used. However, the use of physical assistance (being assisted or guided without the use of physical force) should be clearly documented within each individual BSP as required. BSP documentation should clearly detail how the physical assistance or 'guiding' is conducted by staff (such as via written descriptions and pictures/photos). For the avoidance of doubt, the Independent Advisor notes that all schools should comply with the Department's policy entitled 'Restraint of Student', which has been in effect since 6 October 2015. This policy explicitly states:

'Restraint and seclusion must not be included in a Behaviour Support Plan or be used as a routine behaviour management technique, to punish or discipline a student or to respond to:

- a student's refusal to comply with a direction, unless that refusal to comply creates an imminent risk to the safety of the student or another person
- a student leaving the classroom/school without permission, unless that conduct causes an imminent risk to the safety of the student or another person
- verbal threats of harm from a student, except where there is a reasonable belief that the threat will be immediately enacted
- property destruction caused by the student unless that destruction is placing any person at immediate risk of harm.'

Prior to this policy taking effect was a policy that took effect from 6 October 2012. This policy did not make explicit reference to the contents of BSPs, however, it clearly stated that restraint should only be used in cases of emergency and 'restraint should not be used unless alternative measures to avoid the danger of harm have been exhausted'. Although there is no record of a published policy relating to restraint prior to 2012, it is likely that restraint has always been regarded as an emergency measure and ought to be included in a student's BSP, not used as a form of punishment.

It is noted that some months after the Supplementary Investigation and corresponding Report were completed, the current Principal of Bendigo SDS located a BSP for Student 1 in a folder of 'miscellaneous' electronic documents on the School's internal server. The document appeared to be a draft BSP and was not signed by any representatives from Bendigo SDS or Student 1's parent/guardian, however, its properties indicated that it was last modified by Complainant 1 on 25 November 2010. This corresponds with the time period when Complainant 1 was Student 1's teacher. The BSP includes methods for managing Student 1's behaviour at seven different 'stages' (with 'Stage 1' representing the least challenging behaviour and 'Stage 7' representing the most challenging behaviour). Significantly, 'Stage 4' states the following:

'If the behaviour continues or escalates [Student 1] will be moved to the floor lying down on his tummy. His arms will be held to his sides and his legs lightly held, once [Student 1] is quiet he will be released and redirected to task. If [Student 1] needs to be removed to a different

area (sandpit yard quiet area or classroom) he will be escorted by two staff holding him firmly under his arms.'

The Investigation Team considered the BSP significant because it indicated that at least one version of a BSP for Student 1 included prone restraint as a method of de-escalating behaviour. Although Justitia attempted to contact Complainant 1 in the event that she had any comments to make with respect to the BSP, Justitia was informed by Complainant 1's representative that she would not be able to discuss the document.

As it was not possible to tell from the minimal context of the BSP whether prone restraint had ever been used on Student 1 as part of a behaviour management technique, the Investigation Team's findings with respect to this allegation did not change. Despite this, the Independent Advisor noted that this BSP would generally be considered poor behaviour support practice and would, if implemented as written, have the potential to cause significant physical and emotional harm to both the student and staff required to implement it.

During the period in which one student was at Bendigo SDS, he was subjected to prone restraint – not able to be substantiated

The complaint was brought by the parent of the student in question, who had not witnessed the alleged conduct. There was also no documentary or third party witness evidence directly relevant to the allegation for the Investigation Team to consider. Although the student in question (who is diagnosed with Autism Spectrum Disorder and a reported IQ of 48) displayed good expressive and receptive verbal communication skills, he provided conflicting information about the alleged conduct. While the student was very clear about his reported dislike of Bendigo SDS and how he had been 'treated', upon open-ended questioning by the Investigation Team, the student was unable to provide any additional information about the alleged incident of prone restraint (which he said had occurred only once), including any of the events leading up to the incident and what occurred afterwards. The variability of the information and timelines provided, in addition to his family providing potentially leading information, meant the Investigation Team was unable to make a finding based on the student's information alone.

Despite the above, the Investigation Team was not prepared to find the allegation 'not substantiated' due to documentary evidence that suggested that other students had been physically restrained in other ways while at Bendigo SDS. In particular, the Investigation Team refers to notes indicating that a different student was on one occasion 'assisted to the floor by two staff' and on another had pressure used on his shoulder to make him sit on the floor).

Another student's BSP detailed the use of physical restraint by two staff putting his arms behind his back, which is similar to the position used in prone restraint. Finally, the Investigation Team refers to the evidence of other documented and reported incidents of staff being required to physically 'escort' or 'guide' students to other areas, coupled with the lack of information about how this was achieved. The combination of this evidence means that a hypothesis can be reached that prone restraint may have been used at Bendigo SDS, such that the Investigation Team is not prepared to definitively find that it did not occur in relation to the student.

7. OTHER RESTRAINT ALLEGATIONS: FINDINGS

Between 2003 and 2011, a teacher sat on students – not substantiated

The Investigation Team did not receive any reliable evidence that the alleged conduct had occurred. There was no documentary evidence to indicate that the alleged conduct had occurred, nor did any of the witnesses (with one exception) state that they had seen this occur. Other witnesses, who had worked closely with the teacher in question, appeared to be surprised that the allegation had been made and said they could not imagine the alleged conduct occurring. The one witness who claimed to have seen the alleged conduct occur said she had only seen this on one occasion, and upon further questioning admitted that she did not have a clear view of the scene, did not stop to observe the scene, walked by quickly and made an effort not to look because she was intimidated by Teacher 1. This witness also admitted to having interpersonal issues with Teacher 1 and to disliking her. On balance, the Investigation Team formed the view that the witness may have exaggerated or incorrectly interpreted the incident when she said she observed Teacher 1 'sitting on a student'.

Although this allegation is found to be not substantiated, the Independent Advisor notes that the practice of attempting to sit on a student who was emotionally and/or behaviourally heightened would appear counterintuitive and could ultimately place both the student and staff member at risk of physical and psychological harm.

In 2013, a teacher pinned a student on the ground by sitting on top of him and pinning his shoulders down, put her face in close proximity to his and spat in his face - not substantiated:

The Investigation Team did not receive any reliable evidence that the alleged conduct had occurred. There was no documentary evidence to indicate that the alleged conduct had occurred, nor did any of the witnesses state that they had seen this occur. This included the

witness who Complainant 2 had specifically designated as being able to speak to the allegation.

Although this allegation is found to be not substantiated, the Independent Advisor also notes the importance of completing and filing incident reports whenever a student experiences an episode and staff engage in reactive strategies, such as ‘escorting’ or moving the student to another area of the school. The report should describe the response taken by staff and comment about how this response aligns with the individual student’s BSP.

8. INDOOR SECLUSION ALLEGATIONS

*Between 2003 and 2011, a student was often placed in indoor cages or pens where he spent a significant amount of time. These cages or pens had fasteners that meant that the student could not get out - **partially substantiated***

The aspects of this allegation that were found to be substantiated were that the student in question did spend time in an indoor pen (in fact, the structure was a children’s playpen). However, the Investigation Team found that the student was not (forcibly or otherwise) ‘placed’ in the pen, nor was he unable to get out of the area. The student was able to enter and exit the pen of his own volition. The Investigation Team found that the student suffered from regular and severe grand mal seizures for a number of years, including during the period alleged. Following a seizure, the student often recovered by sleeping, sometimes for several hours. This area described in this allegation was set up in order to allow the student to recover in a safe area away from the other students (who might have disturbed him otherwise) where he could be observed. It contained pillows and blankets. The area and its use were approved by the student’s mother.

The Independent Advisor notes that in the described circumstances, ensuring that the student had a safe and quiet space to recover whilst he could be monitored constantly by staff appears appropriate. File documentation highlighted that Bendigo SDS maintained a high level of communication with the student’s mother about his wellbeing, including the use of the pen. The student also had a Medical Action Plan which contained information relating to his diagnoses, as well as the process to follow in the event the student had a seizure. This included observing the student in the classroom during and after a seizure. In addition, in the context of the information provided, it appears that the student’s Medical Action Plan and the individualized responses identifies within it, including when the student should be observed while remaining in the classroom at school, are appropriate and aligned with current epilepsy

management requirements.

*In 2006, a teacher placed a student in a cage or pen inside a classroom for the purpose of behaviour control. This student did not suffer from seizures – **substantiated***

The Investigation Team found that the quiet area had a big armchair, blankets, pillows and sensory toys. The quiet space is described as a 'pen' since it was made of pool fencing and sectioned off. It had pull gate that the student could enter and exit independently. There was a lock on the pull gate but Teacher 1 stated that the student knew how to use it and was able to enter and exit the area on his own. If the student ever struggled, he could ask Teacher 1 or other teachers for help by saying "help" and they would assist him. The student was therefore able to enter and exit the pen of his own volition. The quiet area was a withdrawal space for the student where he could retreat if he was escalating or needed time out. In light of the student's behavioral concerns, Teacher 1 stated that it would have been unsafe for other students to approach him when he was escalating. Staff observed the student at all times while he was in the area. The use of such spaces was confirmed by other witnesses, although not necessarily in relation to the student. In finding this allegation substantiated, Investigation Team adopts a broad interpretation of the term 'behaviour control', which includes assisting the student to remain calm, de-escalate or avoid escalation altogether.

The Independent Advisor notes that as the student could enter and exit the pen of his own volition, this does not constitute 'seclusion'. The use of the quiet area appears appropriate in this context, similar to the use of a safe/comfort room that contained additional activities that facilitate a student's ability to de-escalate while under the supervision/monitoring of staff.

9. OUTDOOR PEN ALLEGATION

Between 2003 and 2011, three students were escorted into outdoor pens where they were left for considerable amounts of time. The students were often under-monitored during this time - **partially substantiated:**

The aspects of this allegation that were found to be substantiated were that the students in question spent time outdoors in play areas that were fenced off with pool fencing. However, the Investigation Team does not consider these fenced areas to constitute 'pens' within the ordinary meaning of that word, nor does the Investigation Team find that the students were under-monitored during this time. The fenced areas were referred to by Bendigo SDS staff as 'alternative play areas'. These smaller areas, which no longer exist, were separated using pool

fencing. They measured around four to six square meters and were accessible via gates with fasteners on them. They also contained a bench. Some students were able to open the fasteners whereas others were not. On occasion, students were guided into these areas during recess if their behaviour posed a risk or threat to other student and/or staff. The Investigation Team finds it more likely than not that the students mentioned in this allegation – particularly two of the students – were placed in the alternative play areas which no longer exist. Evidence from witnesses indicated that these students were placed in these areas to de-escalate or calm down after a meltdown. These students in particular were known to calm down if they had time alone. However, staff monitored the students at all times, either from elsewhere in the playground or from indoors.

The Independent Advisor notes that restricting the movement of people with an intellectual disability in an area from which they are unable to exit themselves is a form of seclusion (meaning that some students were secluded in this manner in the past – although it is unclear which). However, evidence obtained during the Supplementary Investigation consistently explained what appears to be appropriate use of the areas (such as for de-escalation of behaviours of concern). Students can independently enter and exit the new alternative play areas at Bendigo SDS themselves.

10. SAFE ROOM ALLEGATION

Later Years staff placed three students (not mentioned in the Substantive Investigation) in the structure referred to in the Substantive Investigation as the 'safe room' or the 'cubby house' -
partially substantiated

The previous existence of the safe room is not in dispute and was investigated as part of the Substantive Investigation. Students were not able to enter or exit the safe room of their own volition. The Investigation Team found, on the basis of documentary evidence, that placing two of the students in the safe room formed part of the intervention strategies to be used in relation to them in the event of a meltdown. These students' parents had consented to them being placed in the safe room. On the basis of this evidence combined with information from witnesses, the Investigation Team is satisfied that one student was in fact placed in the safe room and that there is a likelihood that another student was in fact placed in the safe room. In the Investigation Team's opinion, there is insufficient evidence to conclude that the third student was placed in the safe room, which is why this allegation is partially substantiated.

The Independent Advisor notes two concerns in relation to this allegation (noting also that the

existence of the safe room was investigated as part of the Substantive Investigation and that it constitutes a form of seclusion). First, documentary evidence suggests that physical restraint was used in relation to one student. Specifically, his BSP suggests escorting the student to the safe room by means of two staff holding onto his hands behind his back. This is considered physical restraint and raises significant concerns relating to the possible force used by staff and the potential for serious injury (physical or psychological) to the student. The second concern is that documentary evidence suggests that Bendigo SDS staff dictated how long students remained in the safe room, with no evidence about if or how expectations were presented to students to aide their understanding of the situation. The overall purpose of using the safe room appeared to be a punishment, as no documentation was provided about how the safe room was used to assist students with longer term behavioural change.

11. HIGH NEEDS PLAYGROUND STRUCTURE ALLEGATIONS

In 2008, a teacher put a student, who was a student of around 13 years old at the time, in a structure with a pool fenced gate and sloping roof located in the wheelchair yard. The student was often restrained by two staff members until he was locked into the structure, where he would sometimes remain for around two hours. No one monitored the student while he was in the structure – not substantiated

The structure described in the allegation refers to a 'cubby' which was located close to the wheelchair swing in the high needs playground. This cubby was open at the time of the allegation and its purpose was to provide a space for non-ambulant students in wheelchairs to perform standing transfers. Given that the structure was open, it was not possible to 'lock' anyone into the structure at that time. Students could enter and exit the cubby of their own volition. No witnesses recalled the student being restrained by any staff and documentary evidence suggests that the student's behavioural issues were dealt with by placing him in 'time out' (which was a separate area just inside or outside the classroom, where he could be observed). Evidence obtained also strongly suggests that the student would not have had access to or had any reason to be in the vicinity of the high needs playground at any point because he was fully ambulant and attended the Later Years Unit at the time of the allegation.

The Independent Advisor notes no issues of concern in relation to this allegation, but comments that having a cubby to facilitate non-ambulant wheelchair-bound students to be assisted to practice standing transfers seems highly appropriate, as it provides a safe environment away from the various potential hazards provided by ambulant students.

*In or around 2008, another student was also locked into the structure in the wheelchair yard. He was usually restrained by one or two staff twisting his arm up his back - **not substantiated***

For the same reasons that the Investigation Team finds the above allegation relating to the structure in the wheelchair yard to be not substantiated, it finds this allegation to be not substantiated. That is, it was not possible to 'lock' anyone into the cubby at the time of the allegation. Students could enter and exit the cubby of their own volition. In addition, no witnesses recalled the student being placed in the cubby. In addition, a combination of evidence also strongly suggests that the student would not have had access to, nor any reason to be in, the high needs playground (where the cubby was located) at any time. Documentary evidence does, however, show that the student was placed in the safe room on multiple occasions in 2009 and 2010. This appears to have been the main intervention strategy used with respect to the student.

The Independent Advisor notes that the use of punishment-based consequences to behaviours of concern had been widely shown to be ineffective in engendering long-term behavioral change. In fact, this type of practice is considered cruel, inhuman and degrading and should not be used in any circumstances from a human rights perspective.

12. DISHONESTY/CONCEALMENT ALLEGATION

*Two teachers were dishonest in stating to a parent that a teacher of a particular name had never worked at Bendigo SDS. The teachers' dishonesty about this fact was intended to deter the parent's complaint about the teacher's conduct towards her son - **not able to be substantiated***

There was no third party witness or documentary evidence available to the Investigation Team to consider in order to determine whether or not the alleged conduct had occurred. Rather, the allegation was based on the verbal evidence of one party (the complainant) against the verbal evidence of another party (the respondent). Both parties, moreover, gave very different accounts and had very different (as well as vague) recollections of the time period in question. As there were no witnesses to the allegation and no additional information to assist the Investigation Team in its inquiries, the Investigation Team considered itself unable to make a determinative finding in relation to this allegation.

The Independent Advisor notes generally the importance of proper file management and maintenance. While it is unclear whether or not the alleged meeting occurred in this instance, the Investigation Team observed a general lack of documentary evidence relating to meetings,

correspondence and communication between Bendigo SDS and parents/guardians of students.

13. RECOMMENDATIONS

Recommendations relating to Behaviour Support Plans

Methods of escorting or directing students should be clearly identified in relevant BSPs for each student, as necessary. Clear documentation also needs to be completed about the incident requiring staff to 'guide' a student to another area, including information pertaining to the situation as per standard incident reporting formats.

Review all existing BSPs to ensure that they are based on good evidence-based practice from a human rights perspective. Remove inappropriate intervention strategies that use coercion and/or punishment based consequences. For the avoidance of doubt, restraints should not be included in BSPs as behavior support techniques.

Focus BSPs on positive behaviour support strategies (such as multi-element systemic interventions and counter intuitive intervention strategies). Provide teachers with adequate ongoing training in regards to best practice positive behaviour support principles.

Ensure BSPs clearly document the use of penned areas and highlight that these should only be used as a last resort. BSPs should also outline:

- what interventions are used earlier on when the behaviours of concern are exhibited;
- how students are prompted to enter the area and how they can enter/exit the areas of their own volition;
- how long individual students can be placed in these areas (particularly a maximum time period before an alternative method is used);
- the level of monitoring and supervision required;
- how staff communicate to students about what is required of them whilst within these areas; and what needs to occur for students to safely exit.

Recommendation relating to Medical Action Plans

Individual Medical Action Plans should contain sufficient information and detail regarding the required responses to significant medical health issues, including a hierarchy of responses or actions by staff that are required. All Medical Action Plans should be appropriately individualized to reflect the specific medical and recovery (post seizure) needs of the

individual.

Recommendation relating to alternative play areas

Implement clear policies and procedures to guide the appropriate use of alternative play areas at Bendigo SDS, so that they cannot be used purely as a means of detaining or secluding students. The use and purpose of these alternative play areas, including supervision and monitoring requirements should be clearly outlined within a BSP.

Recommendation relating to incident reports:

An incident report should be completed whenever Bendigo SDS's incident reporting policy or procedure dictates. For example, if a student experiences an episode or significant health-related incident which triggers the implementation of reactive strategies, such as staff 'escorting' or moving students to a different area of the school, best practice would dictate that an incident report be completed. The report should document all the necessary information pertaining to understanding what occurred (settings and triggers), the behaviour (description, intensity and duration) response provided by staff (the consequence) and the student's response to the consequence (emotional and behavioural reaction).

Recommendations relating to record keeping and file management

Educate staff in appropriate record keeping and file management practices and monitor these practices on a periodic basis. Ensure that records and files relating to all students can be located and their origins ascertained if required.

Ensure a policy is implemented for completing meeting notes. The policy should include relevant actions of any parties present and should be dated and signed by all in attendance (so as to indicate all in attendance agree with the outline of the meeting and any outcomes).

The Department should consider creating a guidance note or similar type of document regarding proper file management and maintenance to assist all special needs schools to implement best practice principles.

Recommendation relating to non-ambulant students

Ensure that non-ambulant students are assisted to access playground areas other than the high needs playground (when safe to do so).

Recommendation relating to safeguarding Bendigo SDS staff and protecting mental health

Following the conclusion of the Supplementary Investigation, the Department should

communicate with Ms McAinch regarding the health (and in particular, mental health) of Bendigo SDS staff and discuss whether the Department can provide any additional supports for staff, and in what form.