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CORNEY & LIND
LAWYERS

Challenging Student Behaviours

Dealing Effectively with Students, Their Parents, Other Families and Staff

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CORNEY & LIND
LAWYERS

Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



1. Reviewing Rights and Obligations

UNLAWFUL DISCRIMINATION

General Prohibition

- Section 9 of the ADA provides that the Act prohibits direct and indirect discrimination.
- The DDA does not have an equivalent provision but the DDA contains provisions which prohibit discrimination in particular protected areas (including education).
- The effect is much the same because in any event, the prohibition in section 9 of the ADA cannot be relied upon outside a protected area.
- You will note that the word “disability” is not actually used by the ADA, but rather discrimination occurs on the basis of someone’s “impairment”.
- Note also that it is possible for a person to discriminate against another who does not themselves possess one of the attributes, but who is associated or related to a person with an attribute.
- Therefore, it is possible for a complaint of discrimination to be made also by a parent of student with a disability, who experiences unfavorable treatment because their child has a disability.



1. Reviewing Rights and Obligations

Imputed, Presumed or Past Attribute

The ADA extends liability even further pursuant to section 8 of the ADA.

Discrimination can also occur on the basis of an imputed or presumed or a past attribute.

i.e. a student is particularly hyper-active, is unable to concentrate for prolonged periods and acts impulsively. A person may impute to this kind of student or presume the impairment of Attention Deficit Disorder (or ADD) and discriminate against them on that basis, even if this student does not in fact have this “impairment.”



1. Reviewing Rights and Obligations

Avoiding Discrimination

•Direct Discrimination

- Includes treatment of an “associate” of a person with a disability/impairment (i.e. Parent)
- Less favourable treatment than another person without the attribute would be treated in circumstances that are the same or not materially different
- What is the real reason?
- Where there is more than 1 reason
 - Queensland - Impairment must be a substantial reason
 - Commonwealth – Disability must be a reason
- Identify and apply the comparator
- Motive is irrelevant

“the central question will be, why was the aggrieved person treated as he or she was? ... Motive, purpose, effect may all bear on that question. But it would be a mistake to treat those words as a substitute to “because of” (Gummow, Hayne and Heydon JJ in Purvis, at p 163)



1. Reviewing Rights and Obligations

Avoiding Discrimination

• Indirect Discrimination

- What is the Requirement/Condition being imposed?

 - Behaviour Management Policy/ Bullying Policy

 - Terms of the Contract of Enrolment

- Is it reasonable?

 - objective test;

 - less than necessary but more than convenience

 - Relevant circumstances – reasons, effect, financial burdens

- Qld Exemption – Act that is reasonably necessary to protect the health and safety of people at a place of work (section 108)

 - Act to protect all those within the College (staff, students, other parents etc)



2. Restrictive Practices, Restraint and Seclusion

Parents' reaction to school punishment:

- Before: it was rare for parents to seek legal advice about their position
- Now: many do not hesitate to call their lawyer to obtain advice or to deal with the school

Schools are now far more likely to keep parents involved

Overview:

- Considering a school's right to impose discipline
- The range of sanctions available to a school
- A review of the disciplinary process



3. Suspensions and Expulsions

A school's right to discipline – State Schools

- Once the student crosses into school property, generally the school assumes a right to exercise authority over the student but owes a duty of care
- In Queensland, State Schools are governed by various legislation, specifically *Education (General Provision) Act 2006*
- Statutory powers of discipline in the *Education (General Provisions) Act*:
 - to detain: s 283;
 - to suspend: s 285;
 - to exclude: s 290;
 - to exclude the student (by a Principal's supervisor): s 293
 - to cancel enrolment (for students older than the compulsory school age by the Principal): s 317



3. Suspensions and Expulsions

A school's right to discipline – Private Schools

- Underpinned by the Enrolment Agreement
- The Enrolment Agreement should also provide an acknowledgement of the school rules and policies – equivalent to the “Code of School Behaviour” and the “Responsible Behaviour Plan for Students” used in the State School system
- Contractual application (and contractual breach)



3. Suspensions and Expulsions

A school's right to discipline – Private Schools

- Each private school must develop its own discipline process
- The process should identify:
 - The range of sanctions available;
 - The behavioural circumstances which might warrant the imposition for a sanction;
 - The process by which each sanction is applied;
 - Any rights of appeal which a student may have once a sanction is imposed (appeal avenues to higher authorities);
- Procedural fairness:
 - Right to know
 - Right to be heard
 - Support
 - Keep parents informed
 - Decide impartially
 - Consider all evidence
 - Communication



3. Suspensions and Expulsions

Applying the right sanction

- Within any school community, there is a range of sanctions available to the school to address “challenging behaviour”
- Generally applied sanctions include:
 - Time out
 - Detention
 - Behaviour management contract
 - Suspension (internal and external)
 - Exclusions / Cancellation of enrolment
- Under the *Criminal Code Act 1899*, domestic discipline may be used as a sanction:
 - *It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person’s care such force as is reasonable under the circumstances.*
 - *Approach with caution – liability will be personal, not corporate*



4. Dealing with Difficult Parents or Advocates

Managing challenging behaviours from parents and advocates

- The lack of inherent control or jurisdiction over parents makes it difficult for schools to manage problematic parents.
- Ultimately, disputes with parents are inevitable. As such, schools should have dispute resolution mechanisms ready.
- These should focus on achieving a resolution with minimal delay, and on harmonising the school environment to provide high quality education to students.
- The mechanisms should be available to both parents and staff members and the school should facilitate the lodging of complaints and subsequent grievance procedures.
- Measures to avoid disputes include:
 - Graduated response
 - The importance of the Enrolment Contract
 - Engaging with Separated Families
 - Avoiding Discrimination
 - Limiting contact
 - Barring from physical attendance
 - Terminating the Enrolment Contract
 - Litigating where absolutely necessary (using litigation as a sword is fraught with danger)



4. Dealing with Difficult Parents or Advocates

Limiting contact with parents

- Consider limiting communication
 - Graduated limits of communication, depending on the parent's behaviour
 - Basis – College's duty of care to staff
 - Communicate with one staff member
 - No telephone contact, unless risk of injury
 - No email contact
 - Transition to postal contact
 - Final option – limit contact to a third party (College legal representative)
 - Aim – slow down the communication
- Ease of communication can be a weapon against you
 - i.e. Email, telephone etc
 - Expectation of immediate response
 - Increase stress for staff dealing with the parent
 - Distract staff from other responsibilities
- Duty of Care to Staff – *Work Health and Safety Act 2011*
 - A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of workers.
 - Parents can behave in bullying behaviour
 - College has a duty to protect staff in these circumstances



4. Dealing with Difficult Parents or Advocates

Engaging with separated parents

- Have clear boundaries with parents and child
 - What services will be extended
 - What information will be provided
 - What information will be considered confidential
 - Who is responsible for fees
- Try to have open communication with both parents
 - Phrase communications as neutrally as possible
 - Open communication minimises an allegation of bias
 - Get both sides to a story where relevant
 - Only communicate with one parent where necessary
 - Don't suggest to a parent that you "support" their position
- Extra-curricular activities – consider obtaining consent of both parents where practicable
- Keep clear, factual notes of your communications (who, what, when, where). Avoid assumptions or opinions in your notes
- Consider policies around names of children (will you allow "known as" names, or only legal names?)
- Provide information to both parents unless exceptional circumstances

4. Dealing with Difficult Parents or Advocates

The Enrolment Contract

- Should play the central role in establishing the Ground Rules
- Should be in writing and signed by both parents
- Should incorporate the Enrolment Application
 - Require full disclosure
 - Certify honesty in the application process
 - Consequences if full disclosure not made
 - Discern at outset if families might become problems (referee checks, etc)
- Schools should include clear terms in their enrolment contract such as determining who is responsible for payments and the school's right to recover fees from that parent.
- Additionally, enrolment documents should clarify that the school has a right to ask parents/guardians to leave the school grounds.
- Should address the consequences of split families
 - Obligations on parents to notify changes
 - Obligation on parents to provide Court Orders (including Domestic Violence orders)
 - Obligation on both parents to pay fees (joint and several liability)
 - How the College will provide reports (both parents or only one)



4. Dealing with Difficult Parents or Advocates

The Enrolment Contract - Parent Conduct Expectations

- The enrolment contract should include **parent conduct expectations**
- Behaviour Expectations should consider:
 - (a) standards of behaviour;
 - (b) respecting school values;
 - (c) respecting school hours, rules and disciplines;
 - (d) not interfering with teaching, sporting events or discipline of children;
 - (e) is there a right to attend school council or not?
 - (f) proper use of class lists and social media;
 - (g) school retains right of discretion and flexibility;
 - (h) guidelines for interacting with teachers (such as hours, contact methods);
 - (i) using proper complaint channels and implication of a breach; and
 - (j) an exit strategy.



4. Dealing with Difficult Parents or Advocates

The Enrolment Contract - Parent Expectations

- Parent Expectations should:
 - Require appropriate behaviour by students and parents (towards other students, teachers, other parents etc)
 - Require parents to also comply with relevant policies (bullying, etc)
 - Require mutual trust and cooperation (education is a partnership between the College and the parents)
 - Require parents to fully support the educational programs of the College
 - Be regularly reviewed
- Can be tailored for specific circumstances (i.e. supplemental terms for parents who have behaved badly)
 - Parental Contact with the College
 - Parental attendance at College events
 - Immediate termination for non-compliance



4. Dealing with Difficult Parents or Advocates

Terminating the Enrolment Contract

- Process for Termination
 - Will you provide Natural Justice?
 - Not required at law for Non-State Schools (but will still need to prove the breach on “balance of probabilities”)
 - If providing natural justice:
 - Particularise the complaint
 - Provide an opportunity to respond
 - Provide an independent/unbiased decision maker
 - Option of last resort
 - Exposure to common law damages if termination is unlawful/ Repudiation of the Contract
- Seek assistance of legal representatives



4. Dealing with Difficult Parents or Advocates

Strategies beyond enrolment contract

- An exit strategy should also be devised by schools.
- This will be important if disputes cannot be resolved amicably. It may include a warning system for parents and a list of consequences for parents who continuously breach the code of conduct.
- There should be a grievance policy which allows the matter to be escalated (for example, to the principal or to the school board).
- As a last resort, the possibility of expulsion should be provided for.
- Staff members should be trained on the dispute resolution mechanisms as well as internal policies which can help reduce conflict with parents and help teachers understand how to deal with difficult parents.
- For example, schools should put in place policies for handling the privacy of parents and students when demands are received by another parent.
- Procedures should be put in place to guide teachers on how to deal with harassing or bullying parents.

4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- *Education (General Provisions) Act 2006, Division 3*
 - Section 337 and 346 – Direction about conduct of movement
 - Direction by the Principal to restrict conduct by a person on school grounds
 - Up to 30 days in duration
 - Grounds on which Principal must be satisfied:
 - safety and wellbeing of persons lawfully on the premises,
 - prevent or minimise damage to premises,
 - maintain good order,
 - proper management of the School
 - Direction must include:
 - Terms of the direction
 - Grounds for directions
 - Facts relied upon
 - Time limit for the direction
 - Offence to not comply (without reasonable excuse)
 - Subject to review by Chief Executive/Governing Body



4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- Section 339, 348 – Direction to leave and not re-enter for 24 hours
 - Direction by the principal
 - Grounds – Principal reasonably suspects that person:
 - Committed or about to commit an offence
 - Abusive, threatening or insulting language
 - Threatening or violent behaviour
 - Disruption of good order
 - No good and lawful reasons to be at premises
 - Direction must include:
 - Terms
 - Grounds
 - Time limit
 - Offence to not comply with the direction (without reasonable excuse)



4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- Section 340, 349– Prohibition for up to 60 days
- Principal must be satisfied:
 - cause physical harm to, or apprehension of physical harm in, another person on the School premises;
 - damage the premises or its property; or
 - disrupt the good order and management of the School.
- Direction must state:
 - Terms
 - Grounds
 - Facts relied upon
 - Time limit
- Failure to comply is an offence (without reasonable excuse)
- Cannot be given to exempt person (student or employee)
- Accompanied by information notice about the decision setting out review options (for state schools)
- Reviewable by Governing Body (for non-state schools)

4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- Section 341, 350– Prohibition for 60 days to 1 year
- Chief Executive/ Governing Body or Nominee must be satisfied:
 - cause physical harm to, or apprehension of physical harm in, another person on the School premises;
 - damage the premises or its property; or
 - disrupt the good order and management of the School.
- Direction must state:
 - Terms
 - Grounds
 - Facts relied upon
 - Time limit
- Failure to comply is an offence (without reasonable excuse)
- Cannot be given to exempt person (student or employee)
- Subject to review by QCAT



4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- *Department of Education, Training and Employment v CZ* [2013] QCAT 739
 - CZ's son was a student at Pimpama State Secondary College.
 - CZ's behaviour towards to the school's administrative staff was described as aggressive and abusive.
 - She called the principal some obscene names, shoved him in the chest with both her hands and punched the principal in the head three times.
 - CZ ignored a direction to not enter school premises.
 - She struck the principal in the mouth and made a threat that her partner would come to the school and kill the principal. This threat and assault occurred in front of many students.
 - A direction was made by the Department of Education, Training and Employment that she not enter the school premises for 60 days and then it sought from QCAT an order to prohibit her entrance for one year.
 - At the time of the QCAT application being made, CZ's son had been withdrawn from the school. However, there was a possibility that CZ's son would return to school, given that the student could return from Mackay where he was expected to live with his father if things did not work out there.
 - It was reasonable to infer that her relationship with the school was not yet finalised and that she could attend again unless QCAT had made this order. Therefore, an order to prohibit CZ from entering for the maximum period of 1 year was made.



4. Dealing with Difficult Parents or Advocates

Barring from physical attendance

- Alternative Approach – Rely upon common law rights as landowner
 - Land-owner / Lessee has a right to exclude all others from entering or using land
 - Must prove:
 - You are the land-owner/Lessee
 - The individual has intentionally or negligently entered or remained upon your land
 - The person has done so without your permission or other legal justification/excuse
 - Parent/Student has permission to enter school premises
 - However, this permission can be revoked
- Does the Act over-ride the Common Law?
 - Legislation must use clear words, or express an intention, to restrict the application of the common law
 - Arguably the Act does not extend this far – has not been tested by Courts
 - Consider revoking permission as the land-owner/lessee
 - Give the direction verbally and confirm it in writing
 - Seek the assistance of the police if non-compliance



4. Dealing with Difficult Parents or Advocates

Litigation

- Litigation where absolutely necessary
 - Using litigation as a “sword” is expensive and can be fraught with danger
 - May be necessary where the parent is endangering the health of staff/ engaging in serious defamation
 - Embark upon cautiously and with good legal counsel
 - Look out for possible exit points (Deed of Settlement, etc). Settlements may involve compromise, but can still be used to your advantage.
 - But sometimes – it is the only option available to the College to obtain “peace”

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