

Federation Wins Another Occupational Health and Safety Prosecution

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On 19 September 2006, the Chief Industrial Magistrate (CIM) Hart, found the Department of Education and Training breached the Occupational Health and Safety Act on 18 and 24 March 2003 by failing to ensure the health, safety and welfare of employees at Rowland Hassall School.

The Federation prosecuted the Department of Education and Training in relation to two incidents of violent behaviour by a student at the school. In the first incident the Assistant Principal was punched in the jaw and her tooth was broken. The second incident the student displayed violent and threatening behaviour and the police were called. The student had a history of violent and non compliant behaviour which was recorded on his Guidance File. He attended a number of schools including Lawrence Hargrave SSP where it had been found that his placement there was “inappropriate” due to “safety issue/OHS”. He had also been suspended from Glenfield Tutorial Centre after assaulting a staff member. The Principal of Rowland Hassall gave evidence that this information was not provided to either the placement panel or to her when the offer of enrolment was made.

CIM Hart found that “no person or group of persons engaged by the defendant or otherwise had carried out a risk assessment concerning risks to safety associated with CW’s placement at the school”. The assessments were focused on the educational needs of CW and whether the school was appropriate for him.

It was found that the Guidance File contained information which revealed not only the types of “violent conduct but also the circumstances which had in the past triggered such conduct and the specific manner in which he had conducted himself during such incidents”. This information “was a necessary component in any adequate risk assessment”.

The failure to provide information to the school from the Guidance File meant that the Principal was not finally briefed about “the nature and extent of CW’s previous violent conduct” including his suspensions. The information on the Guidance File revealed “that he had previously used a stick as a weapon to bail up a teacher and students in a room preventing them from leaving”. CIM Hart found that the Department of Education and Training had “failed to adequately inform employees about CW’s previous school history relating to any threatened violence”.

The student was not suspended after the first incident. The Department of Education and Training noted this, and inferred that if the Principal had complied with the Suspension and Expulsion Procedures the student would have been suspended and nothing would have occurred on 24 March.

CIM Hart said that in the view of the Court, the Principal’s “answers adequately rebutted any such criticism whether express or implied”. He accepted the Principal’s explanation that the suspension procedures at the time of the incident required suspension for “any student intentionally causing injury or threatening serious violence”. The Principal explained that when dealing with students with behaviour difficulties who are not necessarily in control of their own conduct the reference to intent was not helpful. The Principal had explained that it was difficult to determine the intent of students with behavioural problems and this student had only been at school for two half days.

He rejected any suggestions that the second incident occurred because the Principal failed to suspend. He pointed out that if the principal had been properly informed of the relevant history of CW's behaviour then the incident on 18 March would have been seen as "a continuation of a pattern previously established". He said he was satisfied that the teachers and principal at the school "were highly qualified and dedicated to their tasks".

In concluding that the Department of Education and Training had breached section 8(1) of the Occupational Health and Safety Act on 18 and 24 March the CIM Hart said that the Department of Education and Training "was clearly on notice that CW potentially constituted a risk to Occupational Health and Safety.. However, the fact that the defendant held such information was of no value without that information being brought to the attention of those who were unable to conduct a risk assessment without it". He found that this was a "substantial failure" by the Department of Education and Training "to put in place a system that ensured "the systems of work and the working environment of employees was safe and without risks to health".

A date for the sentencing hearing is set for 7 December 2006.

Changes to Suspension and Expulsion Procedures

In 2005 new Suspension and Expulsion Procedures issued by the Safety and Security Directorate commenced. These procedures now state:

"6.1.5 Principals must long suspend immediately and consistently with these procedures, any student who:

is physically violent: Any student who is physically violent, resulting in pain or injury, or who seriously interferes with the safety and well being of other students, staff or other persons is to be suspended immediately"

This removes any issue about the intent of the student, or whether the policy applies to mainstream and special schools. It is clear that it applies to any student who fits this description.

These procedures also require:

"7.3.10 Where a student is returning from suspension following an incident that involved violence or weapons, the principal must undertake a risk assessment if he or she believes the return of the pose a risk to staff, students and other persons. This should be completed before the final day for resolution of the suspension.

7.3.11 The student should not be readmitted back into the school until the issues identified in the risk assessment have been addressed".

Previously the procedures made no reference to risk assessment.

If a Principal does not suspend in these circumstances he/she may be deemed by the Department of Education and Training to be failing to carry out established policies and procedures which are in place to protect the health and safety of staff and students.