



SECONDARY PRINCIPALS' ASSOCIATION OF NEW ZEALAND INC.

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President's Comment 25

Dear Colleagues

Lynfield College Appeal

SPANZ is pleased to advise that the Court of Appeal decision has been released in the case of Lynfield College. The decision overturns the High Court on the two very important issues of process that we appealed on behalf of principals and their schools.

The two central issues under challenge were the extent of the natural justice requirements applying at the stage at which a principal or teacher undertakes an investigation, and whether a principal is required to consult parents of the student before making a decision to suspend. It is on these two areas that the Court of Appeal has focussed and provided guidance.

Investigation of Misconduct and Natural Justice Requirements

On this issue the Court has said that it is not a requirement of procedural fairness that parents be notified or involved with the investigation process prior to making a decision to suspend. The Court has noted that this is not a place for hard and fast rules and that it would be only in the rarest occasion that the Court would intervene at this part of the process. The Court noted favourably on the concerns that were raised on behalf of principals with this natural justice requirement; the need to assess whether there was even a case to answer, parents unwilling or unavailable to attend and similar practical matters. What the Court held in this respect was:

"We therefore respectively disagree with the conclusion reached by Keane J on this aspect of the case. In our view, he was wrong to require parental involvement in the investigation and questioning of students when misconduct that could potentially lead to suspension is alleged. Imposing such a requirement is not necessary and is at odds with the legislative policy in both the Act and the Rules. We do not consider that Keane J was right to draw an analogy between the process preceding the second suspension decision and that dealt with by s 221 of the CYF Act. Section 221 deals with a criminal process where a young person is arrested or detained by the police or similar enforcement agency or is about to be charged with an offence. The seriousness of the situation is obvious. Even so, s 221 is qualified to some extent by ss 223 and 224. In contrast, a principal's initial inquiry into whether a student should be suspended can, at worst, lead to a suspension decision that will trigger a process and review by the school's board within seven days. The student's parent or guardian will be invited to support the student in that review process."

In short, the Court recognises that the rules of natural justice in effect apply after the suspension process where issues of concern about the investigation procedure or admissions that may have been wrongly given can be raised either with the principal (if it is a stand down) or the board (if a suspension). While it was noted that an overbearing behaviour by a teacher during an investigation may compromise the fairness of it later on, the fact that a parent or representative was not advised during the investigation process is no longer fatal to the procedure. This is an important point that was of concern to principals and hopefully is now addressed, the practicalities of day to day management have been recognised and teachers or principals involved in undertaking inquiries can do so without there being an absolute requirement to contact a parent, guardian or representative although in some cases this still may be advisable.

Suspension Decision: Requirement for Parental Involvement

The Court of Appeal also upheld the appeal in this important area and agreed with the submissions made on behalf of SPANZ that there is no requirement for parental involvement before a suspension occurs, in fact the Act and the Rules indicate the contrary to be the case.

The Court noted that in some circumstances where the school has limited information about a student, consultation with a parent will be necessary for a principal to inform himself or herself about the student. However, the Court does not believe that a black letter law requirement should be applied in all cases, and that failure to consult with parent should not invalidate a decision to suspend.

While the Court of Appeal dismissed the appeal on other grounds which then ensured that the parents in this case did not have the onus of repaying costs, there was also interesting comment on other areas such as the application of s 17(3), that is a breach of a condition of return. These are matters that we will set out more fully once the case has been digested but in the meantime hopefully this outcome will allay the concerns of many principals as to the application of the Lynfield College High Court decision.

SPANZ acknowledges the excellent work done by Richard Harrison in presenting this case to the Appeal Court which has given rise to a judgement that Principals will find to be practical and workable.

A handwritten signature in black ink that reads "Peter Gall". The signature is written in a cursive style with a large initial 'P'.

Peter Gall
SPANZ President