

# BLP BRIEF

As discussed in a previous issue, the enrolment contract can be a powerful tool for a school to enforce behaviour standards and recover school fees. It also, however, carries great responsibility for the school and can be used by a student and their parents against the school. One such possible issue is where alleged breaches of the enrolment contract are used as the basis to avoid paying school fees.

## **Can a parent use the defence that their child was being bullied as a way of avoiding paying outstanding school fees?**

The answer is, possibly. However, cases where parents have pursued bullying claims as the basis for non-payment of fees have been so far unsuccessful. That being said, this position should not be taken as being set in stone. Case law is always changing, particularly in light of the ever increasing knowledge and discussion of the impacts of bullying and indeed novel ways of bullying. As such schools should take measures to mitigate their exposure to this risk.

Bullying is a serious concern and schools should take every possible measure to ensure a safe learning environment for all students. The school has a duty of care to take steps to prevent or ameliorate bullying for all students. There may be scope for negligence claims

## The Enrolment Contract, Outstanding Fees and the Bullying Defence

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against a school if it has not protected a student from harm.

### **Case Study: Romeo v Wesley College [2014] WADC 152**

#### ***What happened?***

- The student attended Wesley College between 2008 and 2011.
- Student was bullied by his peers, including ridiculing and name calling.
- At least some of this bullying behaviour took place in front of school staff, including at camp.
- Staff did not intervene when witnessing such bullying.
- The student unenrolled and his parents refused to pay outstanding fees.
- The school brought an action to recover outstanding fees.
- The parents defended the proceedings.

**The parents alleged** that the school had fundamentally breached the enrolment contract with the parents by:

- failing to protect the student from bullying;
- failing to provide a safe environment;

- failing to supervise students;
- failing to educate the student;
  - They alleged that there had been a total failure of consideration by the school to provide that education.
  - They alleged that the bullying resulted in a lowered level of education, and by extension subsequent future prospects, compared to his peers.
- failing to have appropriate bullying prevention policies;
- failing to act on complaints to reduce the risk of repeated bullying.

#### **The outcome:**

The District Court of Western Australia found the school did not breach a fundamental term of the contract.

- The purpose of the enrolment contract was to provide an education to the student.
- To prevent bullying was not an essential or fundamental term of the enrolment contract and therefore could not be the basis for avoiding the contract.
- The student did receive an education despite the bullying and as such there had not been a “total failure of consideration” on the part of the school to provide an education to the student.

The case was appealed to Federal Court of Australia but was dismissed.

**At this point, parents cannot refuse to pay school fees due to bullying where there is still the ability to educate the student.**

#### **Points to note:**

- This case primarily failed because the student had received some form of education, albeit impaired.

- There may be scope for such an argument for non-payment if there was extreme bullying that resulted in no appropriate form of education at all being provided.
- This could, in theory, open up the possibility of non-payment actions or even reimbursement actions for fees paid.
- Whilst such a case may fail, based on the present position adopted by the Court, it would complicate fee recovery actions.
- Whilst a parent may not be able to establish bullying was an essential term and therefore a breach of contract and a way out of paying school fees, there may be other actions available to parents (e.g. in negligence).

#### **What can I do to protect my school?**

The law doesn't require a school to prevent bullying altogether or ensure that no harm comes to a student, be it physical or emotional. Schools should not make this promise. All that a school can do is guard against the risks. Provided reasonable steps are taken and appropriate responses are enlivened when an issue arises, the risk to a school is minimal.

#### **Some practical tips:**

- Be careful not make promises or representations in publications, enrolment or admission documents about the school environment, such as “a bullying free environment”. This cannot be guaranteed and in fact is likely not to be the case.
- Review bullying prevention policies frequently and ensure these are developed as the school environment changes.

- Consider consulting staff, students, parents and the wider school community on the bullying policy.
- Have bullying policies accessible and available to staff and students.
- Train staff on the content of the policies and on the schools duty of care, including ensuring staff intervene to actively protect students from bullying they witness.
- Review student supervision and yard duty policies frequently to ensure effective supervision and reporting protocols of any bullying behaviour.
- Review the enrolment contract and associated documentation.

### **How can Brennan Law Partners assist?**

If you have any concerns about your policies or procedures please contact us to conduct a review for you. All Principals should frequently review their bullying policies, especially in light of technological changes.

If you have any queries regarding any information in this BLP Brief, we welcome you to contact us at any time.

*This is meant as a guide only and should not be taken as legal advice.*



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