

Can you Expel a Family? Dealing with Aggressive Parents in the South Australian Government Education System

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The South Australian Department for Education and Child Development (“**Department**”) has seen a steady increase in verbal and physical violence against school staff by parents and other third parties. School leaders routinely find themselves in unsafe and vulnerable situations and front office staff, who are often seen as the face of the school, are regularly subjected to abuse and aggressive behaviour. Social media presents a whole new level of challenges for schools and site leaders in managing parent and third party aggression and threatening behaviours. This presentation will outline the legislative and policy tools used by the Department to manage aggressive parents and third parties. The current legislative framework and policy options will be examined along with a discussion on the proposed legislative amendments being introduced in the South Australian Parliament in 2017.

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The world is becoming increasingly litigious. Government departments are constantly required to manage the risks of litigation being initiated by third parties. It is a given that schools are able to discipline students for contraventions of their respective behaviour management policies. However, when it comes to managing the behaviour of parents, and other individuals on school premises, the position is not so clear.

It is the experience of the Department that there has been a steady increase in verbal and physical violence against school staff by parents and other third parties. School leaders routinely find themselves in unsafe and vulnerable situations, and front office staff, who are often seen as the face of the school, are regularly subjected to abuse and aggressive behaviour. Social media presents a whole new level of challenges for schools and site leaders in managing parent and third party aggression and threatening behaviours.

The Department has employed, and continues to put into place, measures to assist schools to manage the behaviour of parents and other visitors to schools, at a site level.

This paper outlines the legislative and policy tools used by the Department to manage aggressive parents and third parties. The current legislative framework and policy options will be examined along with a discussion on the proposed legislative amendments being introduced in the South Australian Parliament in 2017.

Legislative Options

In South Australia there are options available to site leaders in the *Education Act 1972* (SA) (“**Act**”) to respond to persons acting aggressively or misbehaving on school premises. Please note, that the position in South Australia differs with respect to what are known as *standalone preschools*. These are preschools that are not deemed by the Department to be attached to a school. The management of misbehaviour and aggressive persons on preschool premises will be addressed later in this paper.

Definition of misbehaviour

Part 3 of the *Education Regulations 2012* (SA) (“**Regulations**”) addresses the control of trespass and misbehaviour on school premises. Regulation 6(3) provides that:

- (3) ... a person misbehaves on school premises or premises used in connection with a school if the person, while on the premises -
- (a) uses offensive language; or
 - (b) puts or threatens to put at risk the safety or welfare of another person; or
 - (c) behaves in an offensive, disorderly, intimidating or violent manner or threatens to behave in such a manner.

Regulation 8 provides that a person who *misbehaves* on school premises or premises used in connection with a school is guilty of an offence. The Regulations provide for a maximum penalty of \$200, or for an offence not involving violence, an expiation fee of \$50.

Managing misbehaviour on school premises

The Regulations provide the following options for managing misbehaviour on school premises:

Power to request person to leave school premises for 24 hours

Pursuant to Regulation 9, if an authorised person (a member of the police force, an officer of the teaching service, a person appointed under section 9(4) or 101B of the Act to teach at the school, or a person authorised by the Minister for the purposes of Part 3 of the Regulations)¹ reasonably suspects a person of -

- trespassing on school premises; or
- misbehaving on school premises or premises used in connection with a school; or
- committing or threatening to commit any other offence on school premises or premises used in connection with a school,

then the authorised person may request that person to leave the premises. Pursuant to Regulation 9(2), a person who has been requested to leave premises under Regulation 9(1) must not remain on the premises or return or attempt to return to the premises within 24 hours. The Regulations provide for a maximum penalty of \$200 and expiation fee of \$50 for such offence.

¹ *Education Regulations 2012* (SA) Regulation 6(1).

A school can use this provision on each separate occasion where an incident has occurred. If the person refuses to leave it is recommended that the authorised person call the South Australia Police (“SAPOL”) for assistance.

Power to restrain, remove or refuse entry

Under Regulation 12, an authorised person may, if necessary, use reasonable force –

- to **restrain** on school premises or premises used in connection with a school, any person who in their opinion is posing an immediate threat to the safety of another person, to prevent such harm;
- to **remove** such person from school premises or premises used in connection with a school; or
- to **remove** from premises, **or prevent the entry to premises** of, any person who has been requested to leave the premises under Part 3 of the Regulations during the previous 24 hours or who is barred from the premises under a prohibition notice.

Notwithstanding this, it is the Department’s position that restraining or removing people from school premises, where possible, should be undertaken by SAPOL.

Prohibition notices

In some circumstances, a parent or other individual’s behaviour on site is of sufficient severity to warrant their barring from the site for longer than 24 hours.

Under Regulation 10, if a head teacher of a site (the Principal) is satisfied that a person has –

- trespassed on school premises; or
- misbehaved on school premises or premises used in connection with a school; or
- committed or threatened to commit any other offence on school premises or premises used in connection with a school,

then the head teacher may, with the approval of the Chief Executive of the Department, issue the person with a prohibition notice, which is a notice in writing served on the person, barring the person from entering or remaining on the premises for a period not exceeding three months. The maximum penalty under that Regulation for contravention or failure to comply with a prohibition notice is \$200, or an expiation fee of \$50.

From an operational perspective, school principals must consult with their Education Directors (line managers), regarding the need to issue a prohibition notice. Principals must then liaise with the Department’s Partnerships, Schools and Preschools Directorate to ensure that the prohibition notice is prepared accurately, reflects supporting documentation, is approved by the Chief Executive and issued in accordance with legislation.

When considering the request to issue a prohibition notice, the Chief Executive or delegate must be satisfied that the proposed action is proportionate to the subject behaviour.

Under the Regulations, prohibition notices can carry conditions related to the individual’s ability to enter or remain on school premises for the period of the prohibition. These conditions may include:

- a specified location from which the parent must drop off and collect their child/ren from school (i.e. at the school gate, before school commences and after school finishes);
- arrangements that enable the individual to attend the school in certain circumstances, e.g. for required meetings (e.g. parent/teacher interviews, to discuss their child's education, wellbeing or needs), or to collect the child from school during school time (e.g. due to the child's illness or in accordance with the school's behaviour management policy).

Schools must contact SAPOL if a prohibition notice is contravened by the subject person.

Schools are advised to schedule a meeting between the site leader and the prohibited person as soon as possible after the period of prohibition ends, to reconnect the person with the school and restore the relationship between the prohibited person and the school.

A person who is issued with a prohibition notice under Regulation 10 may seek a review in certain circumstances. Under Regulation 11, persons barred from a site under a prohibition notice for a period exceeding two weeks may apply to the Minister for a review of the notice. Upon the hearing of an application for a review of a prohibition notice, the Minister may confirm, vary or revoke the notice. A prohibition notice continues to apply pending a determination by the Minister as to the application to review the notice.

Management of misbehaviour in preschools not covered by the Act

As stated above, sites not covered under the Act are unable to make use of the legislative provisions under the Regulations.

The main category of sites affected is the preschools which are not deemed to be attached to a school site. In South Australia these are known as *standalone preschools*.

Where the powers set out in Regulations 9, 10 or 12 are unavailable to sites, the management of the behaviour of parents or other individuals becomes more complex. From a legislative perspective, in those circumstances, directors of sites are advised that with proper basis to do so, they are able to request that a person leaves the kindergarten premises.

Section 17A of the *Summary Offences Act 1953* (SA) provides that, where a person trespasses on premises and the nature of such trespass is such as to interfere with the enjoyment of the premises by the occupier, the person is guilty of an offence if he or she fails to leave the premises when asked to do so by an authorised person, or again trespasses on the premises within 24 hours of being asked to leave.

Further, under section 17A (2), a person who, while trespassing on premises, uses offensive language or behaves in an offensive manner, is guilty of an offence.

The maximum penalty for the above offences is \$1,250.

Sites are advised to keep an accurate and contemporaneous record of the circumstances in which they have asked the individual to leave the site. If a preschool director requests that a person who is interfering with the enjoyment of the premises leave, and they refuse to do so

(or return within 24 hours of being asked to leave), sites concerned are advised to seek assistance from SAPOL in light of the legislative provisions outlined above.

Directors of sites unable to make use of the provisions under the Regulations may also consider pursuing a charge under the South Australian Criminal Law (i.e. assault), or pursuing an Intervention Order under the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) in their own private capacity, where there are concerns of violent behaviour being directed towards them personally by parents. In both circumstances preschool directors are encouraged to liaise with SAPOL as to the relevant incidents, keep their Education Director apprised of the situation and to seek their own independent legal advice as well as assistance from their union (where applicable).

Policy Options

Warning Letters

Together with the legislative options available to site leaders, the Department has developed a policy approach to manage aggressive behaviour by parents and other individuals with the use of warning letters.

If a person's behaviour towards staff, students or other members of the school community whilst on school premises or in connection with school premises is unacceptable, the site leader may issue a warning letter to the individual. A warning letter puts the person on notice that the unacceptable behaviour will not be tolerated and that the site leader will consider taking further action should the behaviour continue such as the issuing of a prohibition notice. In broad terms, there are two types of warning letters that may be issued by a site. These are outlined below:

First warning letter

The purpose of issuing a first warning letter is to:

- specify the behaviours that the site leader deems inappropriate;
- state that the behaviour will not be tolerated; and
- state that the person must raise grievances with staff in a respectful and courteous manner.

The decision to issue a first warning letter rests with the site leader but the site leaders are encouraged to consult with their Education Director (line manager) for advice and support prior to issuing a warning letter. The first warning letter is signed by the site leader.

Second warning letter

The purpose of issuing a second warning letter is to:

- restate the contents relayed in the first warning letter; and
- inform the person that should the behaviour continue, the site leader will be forced to consider further action including requesting the parent to leave the premises for a period of 24 hours, or prohibiting the parent from entering the school premises.

A second warning letter is issued when the person has been involved in misbehaviour on or in connection with a school premises that resulted in the issuing of warning letter (one) within 12 months.

The decision to issue a second warning letter rests with the site leader but the actual letter is signed by the relevant Education Director (the site leader's line manager).

Prior to sending either a first or second warning letter the site leader must liaise with the Legal Services Directorate within the Department to ensure there are proper grounds for issuing the warning and to provide a draft of the letter to be settled by the Directorate.

Social Media

The Department has seen, and continues to see, a dramatic increase in the use of social media by parents to air their grievances with sites and staff. Parents are increasingly using mediums like Facebook to air these grievances in aggressive, abusive and potentially defamatory ways. Prior to the advent of social media these grievances would have been dealt with in person at site level. Often there is no truth behind the allegations made or the version posted by the parent is a significantly different version of events than that seen by the site. If these posts appear on the site's Facebook page then it is easy to manage; the site controls the page and so the abusive post can be removed, and it is for the site leader to determine if any further action needs to be taken with the parent such as a meeting to discuss the inappropriate use of the site's social media page.

The use of social media by a parent becomes more problematic and difficult for a site to manage when the parent uses their own personal page or a community group page to air grievances. In this situation the site and the Department is essentially powerless to take action unless there is evidence of a criminal offence being committed. It is becoming an ever increasing occurrence for departmental staff to receive 'screen shots' of abusive comments and 'rants' from concerned third parties such as other parents who have viewed the post online. The Department has a number of strategies to support the sites and staff dealing with these situations but ultimately the control of the post remains with the parent and so the Department is significantly powerless to intervene.

Should an abusive, aggressive or defamatory post on a parent's page or community group page come to the attention of the Department the first step is for the site leader to contact the parent involved and attempt to resolve the issue through discussions and meetings, and request that the offending post be removed. If this approach is unsuccessful, the site leader can contact the Online Communications Services Unit within the Department for guidance in reporting the post to the administrators of Facebook or the relevant social media medium to request that it be removed. In instances where a site leader is of the view that the post on social media is so serious that a discussion with the parent will not suffice, a 'warning letter – inappropriate use of social media' may be issued.

Inappropriate use of social media warning letter

The purpose of a warning letter for the inappropriate use of social media is to:

- request the individual refrain from using social media to comment on school related incidents; and
- advise the individual that should the content contain offensive posts of a threatening or harassing nature they may be investigated by SAPOL.

As with the other warning letters, the site leader should consult with their Education Director and the Legal Services Directorate prior to issuing a social media warning letter.

Education and Children's Services Bill

The *Education and Children's Services Bill* ("Bill") is a Bill to replace the Act and the *Children's Services Act 1985* (SA). It brings together provisions for matters such as:

- the establishment, operation and administration of Government schools, preschools and children's services;
- the employment of staff in Government schools, preschools and children's services;
- compulsory enrolment and attendance of children in respect of all schools in South Australia; and
- protections for teachers, staff and students in all schools, preschools and children's services.

The Bill was released for public consultation on 12 December 2016 and it is anticipated that it will be introduced into Parliament in August 2017.

The South Australian Government's general policy position with respect to improving the safety of school communities and the basis for the reforms is that:

Everyone has a right to feel safe at school, free from abuse and threatening behaviour. (Department for Education and Child Development (South Australia), *Education Act Reform: Information Sheet for Teachers, Early Childhood Workers and Support Staff*, 2016).

Provisions relating to managing behaviour in schools, preschools and other children's services

Part 8 of the consultation draft Bill sets out strengthened provisions to deal with challenging behaviour at all schools, preschools and children's services in South Australia. The main feature of these provisions and the changes from the current Act and Regulations include:

Application

The provisions for the protection of teachers, staff and students will apply to the premises of all Government and non-Government schools, preschools, children's services and approved education and care services in South Australia.

While arrangements for dealing with misbehaviour and trespass in Government schools are currently set out in the Act and the Regulations, there is no provision for dealing with misbehaviour in Government preschools or children's services (as outlined earlier in this paper) or any non-Government schools or services.

Offensive Behaviour

The Bill will establish a new offence for a person who behaves in an offensive manner on the premises of a school, preschool or children's service. This replaces the current offence of *misbehaviour* which is limited to Government school premises.

The Bill further establishes new offences for a person who:

- uses abusive, threatening or insulting language to a prescribed person acting in the course of their duties; or

- behaves in an offensive manner towards a prescribed person acting in the course of their duties.

These offences will apply whether or not the behaviour occurs on premises to which the part applies. However, they do not apply in respect of the behaviour of a member of staff of the school or service or a child or student attending the school or service.

A prescribed person means a principal of a school or approved learning program, a director of a preschool or children's services centre, an officer of the teaching service or any other person employed at a school, preschool, children's services centre or approved education and care service.

The new offence for a person who uses abusive, threatening or insulting language will replace the current offence in section 104 of the Act for anyone behaving in "an offensive or insulting manner" toward a teacher.

The maximum penalty for these new offences is \$2,500 but may be expiated under the Bill at \$210. This is a significant increase on the current maximum penalty for similar offences under the Regulations of \$200.

Trespassing on premises

The Bill includes provision for the offence of trespass on premises of all schools, preschools and children's services with a maximum penalty of \$2,500 and an expiation fee of \$210.

The current provisions for trespass on the premises of a Government school set out in the Regulations only apply in respect to the hours of 12.00 midnight and 7.00 am. The new provisions apply to all schools, preschools and children's services and are not limited to any particular hours.

Barring Orders

The Bill provides for a person to be issued with a notice barring that person from the premises of a school, preschool or children's service (a barring notice). This replaces similar arrangements for prohibitions notices currently set out in the Regulations that only apply to Government school premises.

A barring notice may be issued to a person who has:

- behaved in an offensive manner while on the premises; or
- used abusive, threatening or insulting language to a prescribed person acting in the course of their duties; or
- trespassed on the premises; or
- committed or threatened to commit any other offence on, or in relation to, the premises.

A barring notice may be issued by the principal of a school or approved learning program, the director of a preschool or children's services centre or the nominated supervisor of an approved education or care service. A barring notice will be in force for a specified period (not exceeding 3 months) or until revoked. The Chief Executive of the Department may, by notice in writing, vary or revoke a barring notice.

A person may be barred from the premises on which, or in relation to which, the conduct allegedly occurred; and any other premises or place used, or to be used, by the relevant school, preschool, children's services centre or approved education and care service in relation to the provision of education or children's services.

A person cannot be barred from premises under these provisions if they are a member of staff of the relevant school or service or are a child or student attending the school or service.

The maximum penalty for a person who contravenes or fails to comply with a barring notice is \$2,500.

Power to restrain, remove from or refuse entry to premises

The Bill includes provision for an authorised person to direct a person to leave the premises of a school, preschool or children's service where the authorised person reasonably suspects the person:

- has behaved in an offensive manner while on the premises; or
- has used abusive, threatening or insulting language to a prescribed person acting in the course of their duties; or
- is trespassing on the premises; or
- has committed or threatened to commit any other offence on, or in relation to, the premises.

A person who has been directed to leave the premises must not remain on or return, or attempt to return to the premises within 24 hours and the maximum penalty for breaching the provision is \$2,500 or an expiation fee of \$210.

The Bill also provides for an authorised person to use force as reasonably necessary:

- to restrain on, or remove from, the premises (or both) any person who, in the opinion of the authorised person, is posing an immediate threat to the safety of another person; or
- to prevent entry to the premises of a person who has been directed to leave; or
- to prevent entry to the premises of a person who is barred from the premises.

An authorised person for the purpose of these provisions includes a police officer, an officer of the teaching service, a person employed at the premises or any other person authorised by the Chief Executive.

Currently this power is set out in the Regulations but only applies to Government school premises.

Conclusion

Aggressive behaviour by parents and third parties towards education professionals and support staff is increasingly an area of concern for the Department. The challenges presented by the rapid rise of social media and the use of these mediums by parents to aggressively air their grievances is an issue the Department is having to frequently address. Aggressive behaviour by parents and other individuals must not be tolerated. Educational facilities must be in the position to take the appropriate and necessary action to ensure a safe and secure learning environment for students and working environment for staff. Currently frontline staff operate with limited powers to manage such behaviour, with the legislative and policy tools currently available assisting somewhat, however it is anticipated

that the proposed reforms will provide greater assistance and power to those who have been entrusted to care for and educate our children.

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