

# REPORT CARD

AN UPDATE FROM OUR EDUCATION LAW EXPERTS FOR PRINCIPALS, BOARDS AND SCHOOL LEADERS ON KEY ISSUES AND RECENT LEGAL EVENTS IN YOUR SECTOR

## Recent judicial review decisions relevant to your school

Judicial review cases in the education sector are rare. We have summarised two recent cases with key takeaways for you and your school community.

- *Ford v BoT for Smith Primary School* reinforces that enrolment systems must be fair and transparent, and that withdrawing enrolment offers may be unlawful.
- *The Parents of Courtney v The Principal and Others* underscores how high the threshold is for exclusion.

### Student Enrolment Decisions: *Ford v BoT for Smith Primary School* [2021] NZCA 363

#### The facts

This case involved an out-of-zone student who applied for a place at Smith Primary School. She was offered a place, and this offer was accepted. The offer was then revoked seven months later, prior to her starting school. The offer was revoked because the school had received an unanticipated influx of home zone enrolments. This had created pressures on the school's staff, students and resources, and the school could no longer accommodate any out-of-zone students.

The child's parents, as her litigation guardians, applied for judicial review of the decision to withdraw the offer of a place at the school. This case was particularly unusual because it went to the Court of Appeal.

#### The decision

The Court considered that pressures on the school's staff, students and resources as a result of the unanticipated influx of in-zone students were unfortunate, but overcrowding does not provide a basis for withdrawing an accepted offer.

The Court of Appeal unanimously held that revoking the child's place at the school was unlawful and that the offer letter remains valid. They were concerned that allowing offers to be revoked would create an opaque enrolment system, rather than one that is fair and transparent.

#### The lessons – key points to consider

- Be cautious about the nature of enrolment offers you make for out-of-zone students.
- Consider if your enrolment scheme allows you to cancel offers. A school cannot withdraw unqualified offers unless they have express power to do so. When reviewing your enrolment scheme keep in mind whether you can impose pre-conditions or draft conditional enrolment offers. It is very difficult (if not impossible) to revoke an out-of-zone, unconditional offer.
- Once an unconditional offer of a place has been communicated, a child and their family can be expected to act on the basis of this offer.
- Consider using waiting lists instead of giving out-of-zone students an offer at an early stage.

### School Disciplinary Decisions: *The Parents of Courtney v The Principal and Others* [2021] NZHC 2075

#### The facts

This case involved two students with learning difficulties, Courtney and Matthew, who became involved in a sexual relationship. Matthew began sending Courtney concerning online communications that were of a sexual nature. The school was concerned that the communications set a harmful example to other students and Matthew was suspended from the school.

Courtney's mother disapproved of her daughter's relationship with Matthew, and was worried for her

daughter. She wanted Matthew to be excluded from the school, not just suspended. The school declined to do so. Courtney's mother sought judicial review of the Principal and Board's decision not to exclude Matthew from the school.

### The decision

In his judgment, Cooke J analysed the process adopted by the Principal and the Board leading to their decision, and the merits of the decision itself. Cooke J found in favour of the school, deciding that Matthew's actions did not meet the threshold required for exclusion.

### The lessons – key points to consider

- The welfare of other students who may be affected by the decision to re-integrate a student back into school must be taken into account. However, in this case Cooke J was satisfied that the Board had adequately considered the impact that Matthew returning to school would have on Courtney.

- Communication with all parties involved in the decision is important. Cooke J emphasised that Courtney was going to be impacted by the decision to re-integrate Matthew, and the school should have explained the suspension decisions to her parents.
- This case reinforces that the threshold for exclusion is high. Students are only to be excluded for a period that is reasonably justified by the transgression that they have been engaged in.
- **Key takeaway:** Consider your plan for informing parents or students who may be affected by disciplinary decisions imposed on other students. While caution needs to be exercised when sharing such information to ensure that privacy is preserved, it is important that those directly impacted are appropriately communicated with.

*Thanks to Madeleine Holmes for her assistance in preparing this update.*

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