Walking the tightrope – getting the balance right: Issues and Challenges in education law

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Teachers as professionals are highly passionate individuals dedicated, not just in providing learning opportunities for others, but also to participating in professional learning themselves. As an early career teacher I embrace every opportunity to learn new concepts related to my classroom practices, but also beyond, in our professional world. The ANZELA 2014 Conference incorporated both aspects, pedagogical and professional knowledge. The information I attained from the many speakers I observed will assist me in providing high quality learning opportunities for my students, colleagues and the wider community. The opportunity to reflect during these workshops and relate speakers’ experiences and words of wisdom to my own professional world was invaluable.

Other than a Year 5/6 Classroom Teacher and member of our corresponding Year Level Team, I also undertake a range of other roles at my site. I am the AEU Sub-Branch Secretary, a staff representative for Governing Council, and an active member of the following committees: Planning and Review, ICT and Resource Centre Management. I will share much of my professional growth and knowledge attained from the ANZELA Conference within each and every one of these roles in both formal and informal settings.

As a primary school in the 21st century we are all experiencing immense growth in technological advances and are spending much time analysing the implications these have on us, as educational institutions. The most valuable information I obtained throughout the conference was around many of the legal and procedural policies schools should be implementing in light of current events. The broader picture of learning I undertook cannot be segregated in terms of specifics, but in light of this learning, I now feel further equipped to cater to the needs of those I am involved with and more confidently meet the requirements for the abovementioned roles.

The provision of such professional development opportunities from our board is a privilege for educators involved and a credit to your commitment with providing South Australian educational institutions with skilled and well-informed teachers. I am most grateful and appreciative for the opportunity that I otherwise would not have had.

Below you will find a summary of the workshops I attended and some of the key points I took from them.
Keynote, ‘Our Best Investment’, Dr Robyn Layton, QC

This session reiterated in an encompassing fashion the importance of embracing and celebrating diversity in our multicultural society. Dr Layton outlined much research to support her points around the amount of racism still present in our schools today. The following excerpts are points that I found most impactful on myself as an upper primary educator.

In 2012 the Victorian government formed a 5 primary and 4 secondary schools focus group. Some students from other countries said; they’re being told monthly that they didn’t belong in Australia, didn’t want to play, felt left out, pushed or hit, teacher thought they couldn’t deal with it cause it was a cultural issue and less than half had positive attitudes towards people from different cultural groups.

Teachers need to focus on creating a classroom of difference based on the US model built around an anti-stigmatism approach. Educators can visit the Anti-defamation League website for anti-bias training and resources for teachers. The program promotes respect, inclusiveness and civility. It is for Pre-School to Year 12 students, comprehensive and up to date (www.ADL.org).

Act Now Group - forum theatre - the audience can stop the performance and change what they like to alter the ending of the performance (www.actnowtheatre.org.au)

Session 1, ‘Risk Management’, Peter Campbell

This session focused predominantly on case examples and directions for schools to minimise risk in dealing with student information. Peter provided strategies for taking unexpected phone calls from media etc. He outlined the importance for teachers to understand the following legal issues: defamation, trespass, misleading and deceptive conduct, surveillance devices, suppression/statutory restrictions, confidentiality and privacy.

In light of recent events I found it interesting to note that legal suppression orders do not prohibit discussion or other forms of disclosure to colleagues, the school community or the parent body. This order is aimed at television and mass media.

In terms of policies around bringing your own devices to school Peter proposed that schools outline rights to seize devices and gain access if students are suspected of cyber bullying. Other policies included discussing excursion notes and how including as part of permission to attend that photographs will be taken. This is an interesting thought as it is often difficult to display photographs from excursions due to certain students not having talent release permission.

Session 2, ‘Balancing Privacy and Duty of Care’, Jason Newman

Understanding the privacy regulations and guidelines when it comes to working with children is somewhat a grey area for school personnel. It was interesting that Jason pointed out that this generally causes schools to err on the side of caution and be very tight lipped about all information regarding students, even within conversations with other staff members.

It was beneficial to learn that the question you need to ask yourself when considering privacy and children is - Why do we have this information? Thus, am I using the information for its intended purpose? Consider document disclosures and the reasoning behind it.
Unsolicited information is information which is not written; rather it is verbal information from students. However, if it is taken to the school and recorded down then it becomes solicited. Furthermore to this, any information a school counsellor collects is the school’s information rather than their own and must be kept secure on site at all times.


Geoff and Chris provided information in regards to the impact of the Debelle inquiry on schools and the Department. Some of the points of discussion raised centred on the guidelines provided by Debelle into managing allegations of sexual misconduct. All leaders were trained in these.

A new policy has been developed to inform the school community that information be released to the parents at any time during allegations of abuse with children in a sexual nature. The Department is adopting these recommendations. A new CEO incident management division has also been created to case manage critical incidents.

Session 4, ‘Pre-service Teachers’ Cyberlaw Literacies: An Exploratory Study’, Lucy York

This session discussed the lack of understanding new graduates or pre service teachers have around the legal expectations for them and the ways in which they should handle certain situations.

Session 5, ‘Tips and Traps for Schools in discharging their Duty of Care to students on Excursion’, Daniela Cecere-Palazzo

This was a rich and informative session. Most prominently Daniela specified that teachers cannot delegate duty of care to anybody else during an excursion be they contractors, volunteers or specialist teachers. Daniela outlined what is expected of teachers during excursions including the following important points.

- Failure to take action can have adverse liability consequences
- You must always give parents the opportunity to prevent their child from going on an excursion outside of school e.g. a local walk (even if they have given prior consent).
- Always get consent and information from parents in regards to medical requirements
- Don’t be afraid to engage specialist instructors

Key Note, ‘Unpaid Work Experience: Legal Issues and Challenges at the Boundary of Education and Work’, Professor Rosemary Owens

Professor Owens discussed the concept of work experience - combining work and training – and how it has evolved over time. She outlined the implications these unpaid working stints are having on new graduates and unemployed members of society. Jobs which were once held by tertiary educated individuals are now performed by an intern which is a smokescreen for big businesses who are lumping together intermittent and precarious roles.

Professor Owens discussed her own research and explained of the vast growth of arrangements for work experience outside of formal education and training. An Interns Australia Survey showed that 61% of university graduates had undertaken 2 or more internships with no formal contract arrangements.
Key Note, ‘The Right to Education’, Dr Mark McMillan

Dr McMillan discussed what education means for Aboriginal people. He raised the following two crucial points;

- It is a vehicle for overcoming systemic disadvantage
- It allows Aboriginal children to have access to opportunities

We, as educators, can be responsible for making change by working with Aboriginal kids so that education provides a critical element in overcoming disadvantage. This is a shared responsibility.

Session 6, ‘Walking the tightrope of a conduct investigation involving technician based evidence’, Mark Gare

I found this session particularly relevant as we are beginning to consider developing a Bring Your Own Device (BYOD) Policy. Interestingly Mark stated that investigators cannot touch students’ devices unless the parents give them to them, regardless of the evidence presented to them by other students (screen shots etc.).

Parents who wish to have other children investigated for bullying give investigators their own children’s devices, evidence is gained from there and reports are provided to schools. In relation to gathering screen shot evidence I was surprised to hear that screen shots are not enough evidence, you must ensure that you have a forensic capture of the screen.

Session 7, ‘The Activist Parent and the Disgruntled Student’, Amanda Ryding and Natalie Bodak

This session focused on handling situations of suspension and exclusion. Amanda and Natalie went through the process that schools must follow to ensure that they are abiding by legal requirements when dealing with these sorts of situations. To begin with parents and students must be informed of all allegations being put against them and be given the opportunity to put forth their case before anything has been decided. This includes a summary of the allegations and any additional information provided to the school e.g. Psychiatrist reports etc. The student and their parents must be aware of the process as to how the proceedings will take place and how to seek a review. This procedure is about ensuring that everyone is being heard. If they don’t want to talk, you must still provide them with the opportunity.

The bias rule includes providing for language barriers, vulnerable students or disabled students and ensuring that parents are present for those who are underage. In terms of the manner in which a decision is made the decision maker (generally the principal) must be fair, unbiased and have no conflict of interest. Generally schools need to utilise a neutral investigator and a separate decision maker.

The decision maker must weigh up the behaviour of the student, needs, age, educational needs, in conjunction with the need to maintain the health, safety and wellbeing of the staff and students at the school.