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The Palgrave Handbook of Education Law for Schools
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Preface *Dr Stephen Brown*

Section 1: The Need for Legal Literacy by School Principals and Educational Leaders

The need for an Understanding of Education Law Principles by School Principals

Mark Butlin and Prof Karen Trimmer, University of Southern Queensland

This chapter is aimed at setting the scene for the whole book. We commence by exploring an evidence based view that all school principals need some understanding of legal principles as they pertain to the educational setting. The arguments suggest that having a basic understanding of legal matters, should enable principals to be better equipped to recognise and more appropriately respond to a legal problem. We then explore developing trends of this topic over the past two to three decades by examining what legal matters have intersected with school authorities. A consideration of what level of legal understanding principals do possess is then mentioned. Data drawn from a recent research study undertaken on this issue followed by considerations and implications that stem from not having a basic level of literacy are also revealed.

Key words: Education law; negligence; leadership; legal literacy; fear of legal action/consequences; Rights of the Child

Education Law, schools and school principals: What does the research tell us?

Dr Allison Trimble & Professor Neil Cranston, University of Tasmania

This chapter reports recent mixed-methods research into the impact of legal issues on school principals in Tasmania. The reported study was based on data from an on-line survey of principals as well as interviews with a wide range of education sector leaders. The chapter examines the external and internal legal environments of schools within which principals practice, the legal areas they deal with, current legal preparation and development arrangements, principals' legal knowledge and consciousness, and the legal support frameworks available to them.

Key words: Education Law; principals and the law; legal environment of schools

Educational Negligence: Is it a viable cause of action?

Dr Mui Kim Teh, Deakin University & Professor Charles J. Russo, University of Dayton

In the current climate of setting professional standards for the teaching profession, the question arises as to whether schools have a duty of care to students with regard to educational outcomes. Thus, an issue of growing concern for lawyers, judges, and educators in the US, England and Australia is educational malpractice or negligence. But courts have been largely unresponsive when plaintiffs raise claims of this nature. As one American judge

pithily noted, educational malpractice “is a tort beloved of commentators but not of courts.” Against this background, this chapter examines legal developments on educational malpractice in the US, England and Australia, and then discusses the impact of setting professional standards for teaching. It concludes with reflections on the future, if any, for claims of educational malpractice.

Key words: Tort; educational negligence; duty of care; professional standards

Risk and Responsibility: liability of school authorities for harm to pupils

Professor Sally Varnham, University of Technology Sydney

This chapter considers the responsibility of school authorities for the physical, mental and emotional harm suffered by their pupils. It examines the potential for school liability for physical injury within the duty of care owed in the tort of negligence and the approach of the courts to what may reasonably be expected of educators particularly in light of civil liability legislation. It then considers the parameters of school liability for psychiatric harm caused by the intentional acts of others, such as bullying, cyberbullying and sexual abuse. It touches on developing initiatives towards practising citizenship and restorative practice aimed at reducing many of the threats to young people by school cultures characterised by respect and responsibility.

Key words: school liability, negligence, personal injury, bullying, sexual abuse, restorative practice

Child Protection for Educators and Principals: A Moral and Legal Obligation

India Bryce, University of Southern Queensland

Child abuse and neglect has reached ‘epidemic’ proportions globally. Whilst it is difficult to ascertain the exact incidence of child maltreatment, overwhelming evidence indicates the magnitude of the problem is significant (ISPCAN International Congress on Child Abuse and Neglect, 2012). In recent years there has been an influx of media attention, government inquiries into departmental responses to child abuse and neglect and a host of research identifying the prevalence of abuse and neglect in our society. Schools are arguable on the front line, holding a front row seat to the detection and reporting of child maltreatment. As our society becomes more complex, and the responsibilities of educators more diverse and welfare oriented, the legal terrain for educators and educational leaders becomes more ambiguous. This chapter aims to provide education professionals with an overview of the legal issues commonly encountered in the professional context, the nature of mandatory reporting obligations and the often conflicting moral and ethical considerations. The chapter will explore the attitudes and deterrents to educators fulfilling these obligations and role of preservice education in adequately preparing professionals for the complexities of their role on the front line of child protection.

Keywords: Mandatory reporting, child protection, legal

Education, Ethics, and the Law: Examining the Legal Consequences of Unethical Judgment

Prof. Patrick M. Jenlink and Prof. Karen Embry Jenlink, Stephen F. Austin State University

The authors examine the relationship between ethics, law, and policy with the intent of distinguishing between as well as denoting the intersection of ethics, law, and policy as situated in education. Distinguishing between legal and professional ethics, the nature of legal ethics as practiced in adherence to the law and professional ethics as presented in adherence to professional and/or institutional codes of ethics specific to educational cultures is examined. Ethical awareness and sensitivity as related to ethical behavior is examined in contrast to ethical deceit and ethical self-interest. Ethical misconduct is examined, focusing on ethical drift, ethical missteps, conflict of interest, partisanship, and psychological basis for unethical behavior. Exemplars of ethical misconduct are presented and the legal consequences of unethical behavior in education are discussed.

Keywords: Ethics, law, education, unethical behavior, legal consequences

Education administrators in Wonderland: Figuring out policy-making and regulatory compliance when making decisions

Associate Professor Fernando F. Padró and Dr Jonathan H. Green, University of Southern Queensland

This chapter offers administrators an approach to making sense of the legal landscape when making decisions. Philosophies and their stakeholder coalitions impact legislation and administrative follow-through; understanding this causal relationship helps contextualise a byzantine maze of regulations and rules setting obligations and prohibitions. This, in turn, assists in determining responsibilities, defining sanctions and remedies and providing procedural due process to ensure fairness and equity. Much depends on the eye of the beholder and the beholder's understanding of context, events, policy developments and their enactment.

TQM's impact on the legal apparatus: Informing and directing compliance practices

Associate Professor Fernando F. Padró and Dr Jonathan H. Green, University of Southern Queensland

This chapter is one of the few attempts at exploring the impact the approach of Total Quality Management (TQM) has had on society through administrative law schemes, especially in education. Laws and regulations have been looked at and interpreted through the lens of the TQM related language. The idea is to provide educators – administrators and teachers – at all levels of the educational sector a means of understanding what TQM brings to the table as a means of informing day-to-day and strategic decision making.

Keywords: administrative procedure acts (APA), neoliberalism, regulatory compliance, rules, standards, total quality management (TQM)

Articulating the idea of the professional teacher: beyond technocratic compliance

Dr Francine Rochford, La Trobe University, Victoria, Australia

Teaching is often described as a profession. However, the term is highly contestable and its application to teaching is becoming more problematic. As schools are harnessed to the economic priorities of the state education and educational outcomes become sites of public debate. The regulation of education standards for teachers is primarily located in the state, rather than the professional body.

Keywords: professional teacher, self-regulation, teacher organisation, Australian Professional Standards for Teachers

Meeting the challenges facing religious schools – An Australian perspective

Jacquie Seemann, Partner Thomson Geer Law

Religious schools face enormous challenges. They need to balance the needs of their religious/faith communities on the one hand with, on the other, the imperatives created by government regulation in terms of educational principles and goals, and also in terms of anti-discrimination, safety and other protective measures. This chapter considers the parameters placed on religious schools by various forms of regulation, and how these challenges play out in reality as reflected in case law. The focus is on Australian schools, but the chapter also considers some cases and legislation in other jurisdictions: the United Kingdom, Europe, Canada and the United States.

Key words: Religious schools, freedom of religion, religion and the enrolment process, religion in the recruitment process, religious dress or symbols, religion in the classroom

Translating Theory to Practice for Principals Working within Inclusive Education Policy

Dr Amanda A. Webster, University of Wollongong

The introduction of inclusive education policy over the past 20 years has caused tension for many school leaders, particularly in the current climate of high-stakes accountability for schools. Many school leaders report being unprepared to deal with these conflicting priorities or to help their staff translate inclusive education policy into meaningful practice that is feasible within the context of their individual school. In order to bridge this gap, school leaders need to be supported to engage in a variety of roles and to employ content, organisational and leadership knowledge and skills to transform their school culture. Only by using these processes and working collaboratively with staff and parents, can school leaders realise the vision of inclusive education policy at their school.

Key words: leadership, inclusive education, policy, influence, roles

Section 2: Inclusive Schooling and the Impacts of Disability Discrimination Legislation

Towards Inclusive Schools: The impact of the DDA and DSE on Inclusion Participation and Exclusion in Australia

Dr Roselyn Dixon, University of Wollongong

This chapter aims to provide insights into the implementation of the two most significant pieces of legislation in Australia relating to the area of access in Inclusive settings. Access and participation is one of Loremans (2014) three guides for the assessment of Inclusive Education (IE). The discussion of this chapter reveals that despite operating under the same national legislative acts, school systems are enacting Inclusion and participation in different ways leading to inconsistent levels of participation and access. At the same time, rates of

segregation and exclusion are on the increase. The focus of this chapter will also be on how the Appeals process and Criminal Courts have interpreted the Disability Discrimination Act (1992) and the Disability Standards for Education (2005) in a way that has excluded students with disabilities across all sectors and how some non-governmental systems are denying them access and participation. The chapter will conclude by discussing the need for a national approach to the DDA, the DSE and IE to allow the continued goals of the legislation and the Inclusion philosophy to be realised.

Key words: Disability Legislation, inclusion, students with extra support needs, exclusion

Education of Students with Disabilities as a result of Equal Opportunity Legislation

Jose Luis Alvarado & Cathi Draper Rodriguez, California State University Monterey Bay

Students with disabilities have many legal protections in the United States. Many of these protections can be traced back to lawsuits which were fought to better the education of students from culturally and linguistically diverse populations (Yell, 2006). Because of these early and historic efforts by advocates for fairness and equality, approximately, 6.5 million students with disabilities now have a right to a free and appropriate public education in the United States. Public Law 94-142 was passed in 1975 and guaranteed a free and appropriate education to all students with disabilities in the United States. This chapter will explore how court cases that advocated for the rights for Culturally and Linguistically Diverse (CLD) students led to federal equal rights legislation for students with disabilities. Legislation such as the Civil Rights Act of 1964 will be explored.

Key words: Legal rights USA, students with disabilities, students from CALD backgrounds

Reasonable Adjustment in Assessment – the Australian Experience

Dr Elizabeth Dickson, Queensland University of Technology & Prof. Joy Cumming, Australian Catholic University, Brisbane

This chapter explains the legislation and associated case law which underpins the right to reasonable adjustment in education for students with disabilities in Australian schools. It focuses, particularly, on obligations which arise under the Disability Standards for Education 2005 (Cth). It gives examples of the kinds of adjustment which may be made to promote equality of opportunity in the area of assessment. It also considers how the law has constructed the border between reasonable adjustment and academic integrity.

Key words: Assessment; Australian Schools; Reasonable Adjustment; Anti-Discrimination Law; Disability Standards for Education

Student voice and educational adjustments

Dr Shiralee Poed, University of Melbourne

Listening to the voices of students with disabilities offers educators opportunities for critical reflection on their practice (Peters, 2010), and allows children to have agency over educational decision-making. While these opportunities occur informally every day in classrooms, there is also a legal mandate that students with disabilities, or their parents/carers, are consulted in relation to educational adjustments. This chapter provides an overview of the legal obligation to consult students with disabilities in relation to adjustments made to their educational program, and the limits of this legislation. A brief discussion of Australian case

law in relation to the obligation to consult is included, as well as guidance for improving meaningful participation for students with disabilities.

Key words: student voice, reasonable adjustments, meaningful participation, disability standards for education, obligation to consult

The Inclusion and Exclusion of Students with Disability Related Problem Behaviour in Mainstream Australian Schools

Dr Elizabeth Dickson, Queensland University of Technology

This chapter considers the scope of the legal obligation of mainstream Australian schools to enrol and to support students with disability related problem behaviour. It examines if and when students whose behaviour affects the health and safety or learning environment of others in the school community may be refused enrolment, or excluded. It also examines the issue of whether schools can insist that students with disability comply with school behaviour codes. Cases interpreting and applying the Disability Discrimination Act 1992 (Cth) and the Disability Standards for Education 2005 (Cth) are discussed.

Key words: Disability, problem behaviour, anti-discrimination law, Australia

Youth transitioning from juvenile justice settings back into school: Leadership perspectives

Associate Professor Therese M. Cumming, Dr Sue O'Neill & Associate Professor Iva Strnadová, University of New South Wales

Young people in Australia comprise 8-21% of all persons arrested. Due to their age, incarcerated youth have a more complex set of circumstances than their adult counterparts, and are likely to have more stakeholders involved in their transition out of the juvenile justice system back into the community, specifically in the education sector. The chapter addresses the need for early planning, assessment, confidentiality, staff preparation, along with identifying and addressing student needs to effectively plan the transition from juvenile justice systems back to school. These needs are aligned to interventions within a research-based framework. There is a focus on relevant legislation and policy in the area of school transitions and their implications for this vulnerable population of young people. School leadership teams play an important role in this important transition, and as such, principals' perspectives on student transitions from juvenile justice back to school are explored.

Key words: juvenile justice, transition, youth, legislation, school leadership

Legal and Ethical Considerations regarding the Integration of Assistive and Educational Technology for Students with Disabilities: Perspectives from the United States of America

Dr Joseph John Morgan, Sarah J. Murphy & Kristopher H. Yeager, & Dr Tracy Spies University of Nevada, Las Vegas

The availability of assistive and educational technology to support the academic, behavioral, and social-emotional outcomes of students with disabilities in United States public schools continues to increase. As such, educational professionals are seeking evidence-based methods for providing students with disabilities increased access to information and learning using

these technologies. As the proliferation of these technologies continues, it is important that school leaders consider both the legal and ethical requirements for technology use with culturally and linguistically diverse students with disabilities. This chapter will review these legal and ethical principles as they apply to public education in the United States, and will discuss a conceptual framework for ensuring culturally relevant and appropriate assistive and educational technology integration. Implications for practice will be discussed.

Key words: Assistive technology, students with disabilities, legal and ethical requirements, CALD students

A long journey: disability and inclusive education in international law

Dr Ilektra Spandagou, University of Sydney

This chapter discusses the development of understandings of inclusive education in international policy. It begins with an overview of how disability and the education of students with disability have been addressed in UN Conventions and related documents. This is followed by a discussion of the Article 24: Education of the UN Convention on the Rights of Persons with Disabilities, which provides the normative content for States Parties to implement inclusive education. The third part of the chapter illustrates the complexities around the implementation of inclusive education with examples from Initial Reports submitted as part of the Convention's reporting process. In the concluding section, the recent General Statement 4 is presented to demonstrate the practice implications for educational systems and schools.

Key words: International Law, Human Rights, Disability, Inclusive Education, Policy

Changing nappies – whose duty is it in inclusive classrooms?

Dr Franziska Felder, University of Birmingham, UK

The number of students in schools that have complex medical needs has grown in the last years. Many of these students now learn in the regular education setting, but need medical support in order to be able to learn and to have their health care needs fulfilled. It is not always clear who has the duty to fulfil those non directly educational, but yet basic, needs: the teacher or a health care professional such as a school nurse? The chapter reflects upon the legal practices in the UK and the USA, both countries with a long history of inclusive schooling. It then discusses the challenges that are pertinent even in these countries.

Keywords: International Law, public policy, human rights, disability, inclusive education

Section 3: International Context and Rights of the Child

The Rights of the Child: Are we creating a world in which all children are enabled to reach their full potential?

Yvonne S. Findlay, University of Southern Queensland

This chapter, through the lens of the UN Convention on the Rights of the Child, reviews whether we are actually creating world in which children's development needs are recognized and met. The principle focus of the chapter is each child's right to an education. In particular Articles 28 and 29 of the UNCRC are highlighted to provide a benchmark against which to consider education provision in multiple international contexts. Reference is made to the UN

Millennium Declaration, the eight Millennium Development Goals and the UNICEF report “The State of the World’s Children 2016: A fair chance for every child” to enable examination of how a world fit for children is being achieved or not. From examination of the aforementioned reports, three imperatives emerge: economic, education and moral. These imperatives challenge the reader to consider how legislation and policy works towards or hinders the goal of creating a world in which all children are enabled to reach their full potential.

Key words: UNCRC, legislation, finance, acceptance, curriculum

Considering the relationship between the education of children and the application of the law: A brief global view

Patrick Meehan, Canterbury Christ Church University

Every generation of adults faces a serious and complex challenge and successful resolution of this challenge determines the future of their society. This was articulated by Hannah Arendt (1954) as being the transmission to the coming generation all the things which that particular society believes to be its own best features and crucial knowledge for future citizens. Which features, and what knowledge are to be passed on, varies widely around the world due to different philosophical, political cultural and religious beliefs. Nonetheless, all education systems share a fundamental goal, that at some predetermined age the ‘child’ will be considered ready to engage with the world as an adult citizen of its society. This chapter explores such debates within the context of UK compulsory education.

Keywords: formal schooling, law, childhood, outcomes of education, modernism, rationalist utilitarianism

Issues and impact of the Named Person Legislation in Scotland

Dr Rachel Shanks & Scott Peter, University of Aberdeen

This chapter concerns the new Named Person Service in Scotland. For school-age children the Named Person will be a teacher and their role will be to advise, inform and support the child, young person or their parent, to help them access services or support or discuss or raise a matter about the child/young person with a service or relevant authority. The Named Person Service is an example of systemic, and potentially transformational, change in which teachers and principals play a key part. When in force school principals will be responsible for: protecting children’s welfare and well-being; (trans)forming ever closer working relationships with other agencies and practitioners; keeping parents and families informed about the Named Person Service; adhering to information-sharing legislation and guidance; and involving children in decisions that significantly affect their lives.

Keywords: Named Person Scheme; workload; information-sharing; inter-agency working; family-school communications.

Difficulties of Comprehension in the Citizenship Education in Europe

Dr Eszter Anna Nyúl, University of Pécs, Hungary

The aim of the present study is to point out linguistic, historical, and political differences, which render common thinking difficult in the field of citizenship education. In a historical analysis, we seek answers to questions of the present time.

Amongst all knowledge taught at school, citizenship education is the most dependent on the social-political system of a given state. In this theme precise definitions are more necessary than generally expected in educational matters.

This study calls attention to problems which may help clarify background meanings of technical terms used in different languages and also provide aid in the realization of a more efficient citizenship education.

Keywords: EU, Hungary, democracy, Public Affairs, Youth Politics, Education of citizens

Training Teachers to Prevent Violence against Children: The First Line against Family Violence

Dr Elisabetta Biffi, University of Milano-Bicocca, Italy

Within the framework laid down by the United Nations Convention on the Rights of the Child for the respect and fulfilment of children's right to be free from all forms of violence, this chapter focuses on the role of teachers and educators in promoting and defending children from violence. Firstly, this chapter discusses the international strategies underpinning the battle against violence towards children as a necessary prerequisite to defining the key part to be played by teachers. Subsequently, the chapter focuses on the specific role of schools in promoting children's rights and preventing violence against children. Finally, the chapter looks at the specific training required by teachers if they are to effectively contribute to the battle against violence.

Key words: children's rights, violence against children, teachers training, family violence, education

Restrictive Practices in Australian Schools: Institutional Violence, Disability and Law

Dr Linda Steele, University of Technology Sydney, Australia

The current legal framework governing restrictive practices in schools regulates, rather than prohibits, restrictive practices. The central aim of this chapter is twofold: (i) to provide an overview of the legal framework of the use of restrictive practices in schools, and (ii) to identify some critical entry points into questioning the self-evidence of this legal framework and consequently reframe restrictive practices in schools as a lawful form of institutional violence. The chapter begins by introducing restrictive practices in schools and then provides an overview of the current legal framework that regulates the use of restrictive practices, and ultimately positions these practices beyond legal definitions of unlawful violence and hence beyond legal liability. The chapter then discusses the United Nations Convention on the Rights of Persons with Disabilities and recent Australian government inquiries, which provide a strong policy basis for viewing restrictive practices as violence, which should be prohibited.

Keywords: Restrictive practices, Violence, Disability rights, Disability, Human rights, Law reform

Counter terrorism Law and Education: student teachers' induction into UK Prevent Duty through the lens of Bauman's Liquid Modernity

Dr Lynn Revell, Reader in Religion and Education, Canterbury Christ Church University, Canterbury Kent, UK Prof Hazel Bryan, Professor of Education, University of Gloucestershire, Cheltenham, Gloucestershire, UK

Dr Sally Elton-Chalcraft, Associate Professor of Education, University of Cumbria, Lancaster, UK

This chapter explores the way student teachers understand their professional role in relation to the UK's counter terrorism legislation as it relates to schools. Data were collected from one hundred and fifty students based on their experiences in schools and analysed using Bauman's notion of liquid modernity as a theoretical frame. We argue that despite a normative attachment to notions of professional objectivity and political detachment in the classroom, most student teachers interpreted their new duties as legitimate and were uncritical of legislation and policy that expects them to play an overtly political role in schools.

Keywords: counter terrorism law, liquid modernity, Prevent duty, teacher education, teacher professionalism

Compulsory Schooling and Cognitive Imperialism: A Case for Cognitive Justice and Reconciliation with Indigenous Peoples

Prof Marie Battiste & Prof James [Sa'ke'j] Youngblood Henderson, University of Saskatchewan

Compulsory education laws for Indigenous children in Canada based on Eurocentric knowledge systems have interrupted their normative holistic education, generated cognitive imperialism, induced cultural genocide and intergenerational trauma, and negatively affected their overall success outcomes for themselves and their self-determining communities. Contemporary educators, especially Indigenous educators, are now faced with ameliorative challenges for reconciling the traumatic, nihilistic effects of compulsory education, decolonizing the assimilation model, generating ethical space for Indigenizing the compulsory curricula, and creating a balanced compulsory curricula reform based on respect for constitutional rights of Aboriginal peoples and the United Nations Declaration of the Rights of Indigenous peoples. Accomplishing these challenges, the authors assert, through new a critical examination of public schooling and the Indigenizing of the academy is set to generate innovative, better educational systems for Indigenous children based on the hard lessons learned of the past.

Keywords: Aboriginal, Indigenous, cognitive assimilation, Eurocentrism, compulsory schools, Indian Residential Schools, constitutional reconciliation, Indigenization, holistic learning, cognitive justice