

# Haywards

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**PRIVATE AND CONFIDENTIAL**Mr P J Crawley  
Principal  
Knox Grammar School  
WAHROONGA NSW 2076

Dear Mr Crawley

Re: We act for 

We are instructed that our client has been employed by Knox Grammar School for over 9 years, and is currently engaged in the capacities of English Teacher and Housemaster.

On 26 May 2000, our client received a letter signed by you, requiring him to attend a meeting at your office at 3 p.m. that day to discuss his: "*behaviour with a boy at this school*". The letter also informed him that Mr Rex Ward, the Deputy Headmaster, would also be in attendance. No other details were given to our client at that time.

Our client attended the meeting as directed, accompanied by Ian Thwayte, the Independent Education Union delegate, who attended as an observer.

It transpired during the meeting, which assumed the character of a disciplinary interview, that the student concerned was .

The specific complaints directed against our client, concerned an alleged too frequent contact with the student concerned, the sending of what was described as an "inappropriate email", and too frequent contact with boys whom our client did not teach. Our client was not provided with advance notice of the specific nature of these allegations, the presentation of which widened the scope of the disciplinary inquiry beyond any expectation induced by your letter requiring him to attend.

The complaints themselves, striking as they do at the very heart of our client's suitability as a teacher and his professional standing, concerned matters of grave

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importance, and necessitated, in our view, a very careful regard for his legal rights and interests.

At the conclusion of the interview, our client was presented with a letter, already drafted and made ready for presentation to him before the meeting commenced. The letter concluded by issuing our client with a final warning in the following terms:

*'In the event that any evidence comes to my attention that you have breached the above direction, I will take further disciplinary actions, which action may include the termination of your employment'.*

Our client was also issued with five directions concerning future contact with ASW [REDACTED] in the very same letter.

This action clearly demonstrates that a conclusion, concerning our client's guilt, had already been reached before he was allowed to respond to the allegations.

Your letter also made reference to earlier conversations our client had had with Mr Ward related to another student of the school, [REDACTED]. It also referred to a telephone call to Mr Ward from ASW [REDACTED]'s father, informing the school that he considered the relationship between our client and his son to have been "highly unusual" and his desire that our client cease further contact with his son.

We are instructed that our client had made you aware of ASW [REDACTED] "unusual" attachment to him and, in fact, sought your counsel and advice as to how he might best manage the situation. He also discussed the matter with Mark McCrossin, the Year Master, and ASW [REDACTED]' father, who urged our client not cut off contact with ASW [REDACTED], as our client proposed to do, because it would be "too cruel".

Our client also made you aware of the personal discomfort he had been experiencing as a consequence of what he described as "vague and unsupported comments made about my behaviour and intentions", by persons who appear to have enjoyed the luxury of defaming our client from a position of anonymity.

It is acknowledged by our client that you responded to these representations sympathetically, as is clearly evident from your hand-written memo (undated), wherein you refer to "gossip" and "rumours", and convey to our client your recognition that he had "managed it all very well – but I believe the rumours have been confronted and the gossip stopped".

The gossip and innuendo hasn't stopped, but has provided a context for the continuing assault upon our client's professional reputation and emotional health.

### **Procedural fairness denied**

Having regard to the seriousness of the complaints directed against our client, he was entitled to expect that a proper balance would have been struck between the protection of his rights and interests, and the weighty responsibility the school undeniably has in relation to the students concerned.

This balance was not achieved, and as a consequence, our client has been denied procedural fairness in the following respects:

1. He was not provided with details of the specific allegations directed against him, prior to the disciplinary interview;
2. He was not given a reasonable period of time in which to prepare an adequate response to each allegation and, if necessary, to seek independent legal advice regarding them;
3. The disciplinary inquiry was not conducted in a manner free from a presumption of his guilt;
4. Our client was not told what the source of the allegations were, including the names of his accusers;
5. He was not provided with access to any materials you may have relied upon, such as letters of complaints or statements;
6. He was not provided with a complete and unfettered opportunity to address all of the allegations directed against him;
7. The conclusions reached were not based on probative materials properly considered during the disciplinary interview. On the contrary, there appears to have been a singular reliance placed upon extraneous matters, such as the anonymous complaints;
8. There was no basis upon which a conclusion of misconduct on our client's part could have been reached;
9. There is, as far as can be ascertained, no specific misconduct alleged. The punishment of a final warning appears not to have been predicated upon any misconduct at all;
10. Proper regard was not paid to our client's long and unblemished employment record, and his acknowledged good character over the nine years of his employment. In particular, the absence of any previous, proven misconduct of this nature.

For all the reasons given in the foregoing, we believe that the conclusions reached in your letter of the 26 May 2000, were not soundly based. In saying this, we do not deny the authority invested in you to require our client's compliance with the directions set out in the fourth paragraph of your letter. Our client's objections relate to the disciplinary nature of the direction, and suggest to you that there was no proper basis for concluding that he was guilty of misconduct sufficient to attract a final warning (or any punishment at all for that matter).

We strongly urge you to withdraw your letter of 26 May 2000.

#### **Our client's response to the allegations raised on 26 May 2000**

Our client has prepared a detailed response to the allegations involving REDACTED REDACTED and ASW with addenda concerning the photography issue and the student REDACTED. He formally requests that these be attached to his personnel file.

Our client has also provided personal endorsements prepared by teachers and parents who have observed his caring and professional relationship with his students. These give a collective impression of a teacher with a genuine concern for their welfare and

development of his students. It is entirely appropriate to have regard to testimonials of this kind, when assessing the character of a person who is the subject of disciplinary action.

Our client also formerly requests that you provide him with access to his personnel file, and permit him to take a copy of any material contained in it.

Finally, we need to put you on notice that our client intends to rely upon this letter in any legal proceedings he may elect to initiate in relation to the matters discussed in it.

Yours faithfully



Phil Hayward