FEDERAL COURT OF AUSTRALIA

Connor v State of Queensland (Department of Education and Training) (No 3) [2020] FCA 455

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| File number: |  |
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| Judge: | **RANGIAH J** |
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| Date of judgment: | 9 April 2020 |
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| Catchwords: | **HUMAN RIGHTS** – Disability discrimination in education – where school suspended, physically restrained and secluded student who exhibited disruptive and violent behaviour – where behaviour was consequence of disability – whether treatment of student less favourable than treatment of a non-disabled student in the same circumstances – whether student was discriminated against by limiting access to benefits, subjecting student to detriment and failing to provide student with reasonable adjustments – allegations of discrimination not made out – application dismissed  |
|  |  |
| Legislation: | *Disability Discrimination Act 1992* (Cth) ss 4, 5, 10, 11, 22(2), 29A, 34 and 45(1)*Disability Discrimination and other Human Rights Legislation Amendment Act 2009* (Cth) *Evidence Act 1995* (Cth) ss 64(2) and 140 |
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| Cases cited: | *Briginshaw v Briginshaw* (1938) 60 CLR 336*Kiefel v State of Victoria* [2013] FCA 1398*Kuhl v Zurich Financial Services Australia Ltd* (2011) 243 CLR 361*Purvis v New South Wales* (2003) 217 CLR 92*Qantas Airways Ltd v Gama* (2008) 167 FCR 537*Sklavos v Australian College of Dermatologists* (2017) 256 FCR 247*Tropoulos v Journey Lawyers Pty Ltd* [2019] FCA 436*Varasdi v State of Victoria* [2018] FCA 1655*Walker v State of Victoria* [2011] FCA 258*Walker v State of Victoria* [2012] FCAFC 38*Watts v Australian Postal Corporation* [2014] FCA 370 |
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| Date of hearing: | 21–31 October 2019 |
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| Date of last submissions: | 18 November 2019 (Applicant)29 November 2019 (Respondent) |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 355 |
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| Counsel for the Applicant: | Peter Connor appeared in person as the litigation representative on behalf of the Applicant |
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| Counsel for the Respondent: | Mr S Hamlyn-Harris |
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| Solicitor for the Respondent: | Crown Law |

ORDERS

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|  | NSD 875 of 2017 |
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| BETWEEN: | BEAU CONNOR (BY HIS LITIGATION REPRESENTATIVE PETER CONNOR)Applicant |
| AND: | STATE OF QUEENSLAND (DEPARTMENT OF EDUCATION AND TRAINING)Respondent |

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| JUDGE: | RANGIAH J |
| DATE OF ORDER: | 9 APRIL 2020 |

THE COURT ORDERS THAT:

1. The proceeding is dismissed.
2. The applicant’s litigation representative, Peter Connor, pay the respondent’s costs of the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

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RANGIAH J:

1. In this proceeding, the applicant, Beau Connor, by his litigation representative, Peter Connor, alleges that the respondent, the State of Queensland (**the State**) discriminated against him in contravention of s 22(2) of the *Disability Discrimination Act 1992* (Cth) (**the DDA**). He claims declarations, damages and other relief.
2. Beau Connor is presently 14 years of age, having been born on 30 November 2005. Peter Connor is Beau’s father.
3. Peter Connor objects to the use of the title “Mr”, as he asserts that it is a “military title”. I will refer to members of the Connor family by their first names or their full names and without the use of any title.
4. The proceeding concerns Beau’s treatment at Kawungan State School (**the School**) in Hervey Bay in Queensland. Beau was a student at the School from January 2011 to August 2015.
5. Beau has been diagnosed with Autism Spectrum Disorder (**ASD**), Pervasive Development Disorder (Not Otherwise Specified) (**PDD-NOS**), Oppositional Defiant Disorder (**ODD**), Attention Deficit Hyperactivity Disorder (**ADHD**) and other conditions.
6. Beau would frequently engage in disruptive behaviour at the School, which sometimes included physically assaulting teachers or students. On some of these occasions, he was physically restrained by staff members and confined in a room. He was frequently suspended from the School. Those actions, together with allegations that the School failed to provide Beau with reasonable adjustments, form the basis of the claim.
7. Beau was initially represented by lawyers, who drew the statement of claim. By the time of the trial, he was not legally represented and Peter Connor conducted the trial. It is appropriate to acknowledge that Peter Connor presented the case competently and with considerable courtesy to the Court.

## The legislation

1. Section 22 of the DDA provides, relevantly:

**22 Education**

...

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student’s disability:

(a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

…

1. Section 4 of the DDA defines “educational authority” to mean, “a body or person administering an educational institution”. The expression “educational institution” is defined to include a school. It is not in dispute that the State is an “educational authority”.
2. The applicant alleges direct discrimination within s 5 of the DDA. That section provides:

**5 Direct disability discrimination**

(1) For the purposes of this Act, a person (the ***discriminator***) ***discriminates*** against another person (the ***aggrieved person***) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.

(2) For the purposes of this Act, a person (the ***discriminator***) also ***discriminates*** against another person (the ***aggrieved person***) on the ground of a disability of the aggrieved person if:

(a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and

(b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.

(3) For the purposes of this section, circumstances are not ***materially different*** because of the fact that, because of the disability, the aggrieved person requires adjustments.

1. Section 4 defines the expression “reasonable adjustment” as follows:

***Reasonable adjustment***: an adjustment to be made by a person is a ***reasonable adjustment*** unless making the adjustment would impose an unjustifiable hardship on the person.

1. Section 4 provides that “unjustifiable hardship” has a meaning affected by s 11. Section 11 provides:

**11 Unjustifiable hardship**

(1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the ***first person***) would be an ***unjustifiable hardship***, all relevant circumstances of the particular case must be taken into account, including the following:

(a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;

(b) the effect of the disability of any person concerned;

(c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;

(d) the availability of financial and other assistance to the first person;

(e) any relevant action plans given to the Commission under section 64.

Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

(2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

1. Section 4 of the DDA defines “disability” in relation to a person to include:

*…*

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

…

To avoid doubt, a ***disability*** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

1. Section 10 of the DDA provides:

**10 Act done because of disability and for other reason**

If:

(a) an act is done for 2 or more reasons; and

(b) one of the reasons is the disability of a person (whether or not it is the dominant or a substantial reason for doing the act);

then, for the purposes of this Act, the act is taken to be done for that reason.

1. The applicant bears the onus of proving his allegations of discrimination: *Qantas Airways Ltd v Gama* (2008) 167 FCR 537 at [65], [132]. The allegations must be proved on the balance of probabilities. The serious nature of the allegations must be borne in mind when assessing the evidence: s 140 of the *Evidence Act 1995* (Cth); *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–362.

## The issues

1. The statement of claim alleges that the State discriminated against Beau in contravention of s 22(2)(a) and (c) of the DDA by limiting his access to benefits provided by the State, subjecting him to detriment and failing to provide him with reasonable adjustments. The allegations are of direct discrimination under s 5(1) and (2) of the DDA. There are no allegations of indirect discrimination.
2. The statement of claim makes three allegations of unlawful discrimination, described as “the First Allegation”, “the Second Allegation” and “the Third Allegation”.
3. The First Allegation is that Beau was suspended from the School on multiple occasions during the period from February 2011 to August 2015. These are described as “formal suspensions” and “informal suspensions”. The “informal suspensions” involved Beau’s parents being called to take him home from the School during normal teaching hours. The informal suspensions are alleged to have occurred on ten occasions. There are alleged to have been eleven formal suspensions totalling 88 days.
4. It is alleged that by suspending him, the State treated Beau less favourably than it would treat a student without disabilities, or without Beau’s disabilities, attending a government school. The formal and informal suspensions are alleged to have been imposed directly due to Beau’s disabilities. It is further alleged that the State failed to provide Beau with supports that students in government schools can receive, such as a formal social skills program, language and sensory programs, engaging an external expert to address Beau’s behaviours of concern and a comprehensive Individual Education Plan.
5. The Second Allegation is that Beau was subjected to physical restraint/violence and seclusion/isolation at the School on the basis of his disability. This is alleged to have occurred on at least 25 occasions. It is alleged that this treatment was directly due to Beau’s disabilities and was also inconsistent with the School’s policies, procedures and guidelines for the treatment of students. It is alleged that the State treated Beau less favourably than it would treat a student without disabilities, or without Beau’s disabilities, attending a government school.
6. The Third Allegation is that the State failed to provide Beau with a Functional Behaviour Assessment or a Behaviour Plan. It is alleged that a Functional Behaviour Assessment was required to determine the function of Beau’s behaviours of concern and mitigate or extinguish those behaviours. It is alleged that the Behaviour Plans that were developed by the School were inadequate and punitive. It is alleged that the failure to provide a formal Functional Behaviour Assessment and Behaviour Plan had the effect that Beau was, because of his disabilities, treated less favourably than a student without his disabilities would have been.
7. The State admits that Beau had at least ASD, PDD-NOS, ODD and ADHD and that he had a “disability” within the meaning of s 4 of the DDA.
8. As to the First Allegation, the State alleges in its defence that in 2014 and 2015, the School implemented Individual Behaviour Support Plans, agreed with one of Beau’s parents, which contained a range of behaviour de-escalation techniques, and if those failed, the possible consequences included Beau’s parents being called to take him home, withdrawal from the class or suspension from the School. The State denies that it provided less favourable treatment to Beau and asserts that it provided reasonable adjustments. It also pleads that it did not treat Beau less favourably than another student without a disability, who displayed the same aggressive and non-compliant behaviour would have been treated.
9. As to the Second Allegation, the State admits that its employees engaged in physical restraint of Beau on approximately nine occasions, but alleges that on each occasion, the restraint was carried out in response to highly disruptive, disobedient or aggressive behaviour which posed a threat of harm to Beau, other students or staff. The defence pleads that the employees physically restrained Beau in accordance with the *Disability Standards for Education 2005* (**the** **Education Standards**), the *Safe, Supportive and Disciplined School Environment Procedure* (**the** **Procedure**), and the *Kawungan State School 2012-15 Responsible Behaviour Plan for Students* (**the** **School Plan**), and, further, the use of physical restraint was consented to and encouraged by Beau’s parents.
10. The State admits that its employees utilised a quiet area known as the “Withdrawal Room” to calm Beau on approximately 17 occasions and says that, on each occasion, the use of the Withdrawal Room was carried out in response to highly disruptive, disobedient or aggressive behaviour which posed a threat of harm to Beau, other students or staff. The State alleges that the use of the Withdrawal Room was in accordance with the Education Standards, the Procedure and the School Plan and was consented to and encouraged by Beau’s parents. The State’s actions are said to be reasonable measures taken to protect the health and safety of Beau, other students and staff.
11. The State pleads that by reason of the actions taken by the School, including implementing Individual Behaviour Support Plans, making individual adjustments to the curriculum, increasing targeted supervision and implementing flexible learning arrangements, it provided reasonable adjustments for Beau and did not treat Beau less favourably than another student without a disability, who displayed the same aggressive or non-compliant behaviours would have been treated.
12. As to the Third Allegation, the State asserts that it implemented Behaviour Support Plans and Individual Curriculum Plans in respect of Beau. It alleges that these plans were prepared in consultation with, and endorsed by, Beau’s parents. It asserts that these plans were in accordance with the Education Standards, the Procedure and the School Plan. The State alleges that it made reasonable adjustments to accommodate Beau, including provision of a quiet space for him to retreat to, targeted learning activities, one-on-one teacher aide support, modifications to the teaching environment, engagement of Beau’s parents within the classroom environment, diversion and de-escalation techniques and meetings with Beau’s parents and teachers and guidance officers. Further, the State alleges that the reasonable adjustments it took constituted “special measures” within s 45(1) of the DDA.
13. I note that while the State pleads unjustifiable hardship under s 29A of the DDA and special measures under s 45, it did not advance any submissions in support of these matters. I do not propose to consider them further.
14. On the seventh day of the nine day trial, Peter Connor sought leave to file an amended statement of claim. It sought to raise new allegations against staff of the School including attempted murder, abuse, deprivation of liberty, assault and battery, denial of medical attention, trespass, torts alleged against former lawyers and breaches of various regulatory provisions. I ruled that leave should not be granted, given that some of the new allegations were outside the jurisdiction of the Court or could not appropriately be brought within the present proceeding, and all were inadequately particularised and would cause prejudice to the State as they were raised too late. Accordingly, the proceeding must be determined on the basis of the allegations contained in the statement of claim filed by Beau Connor’s former lawyers.

## The witnesses

### The applicant’s witnesses

1. Five witnesses provided evidence in support of Beau’s case. They were Beau, Peter and Julie Connor, Margaret Webb (a behaviour and disability expert) and Daniel Wendt (a psychologist).

#### Beau Connor

1. Beau Connor affirmed two affidavits that have been admitted into evidence. He was not required for cross-examination.
2. Beau’s first affidavit annexes a statement handwritten by him dated 15 July 2019. He states he had trouble at school and used to get upset in class. He says sometimes his teacher would kick him out of class and he was suspended a lot. He says:

The teachers and SEP [Special Education Program] would hurt me and choke me, wedgie me, scratch me and drag me into the room.

1. Beau says that the teachers hated him. He says that one time he vomited to get out and that he would get locked up for two hours and he was scared. Beau states that he has trouble sleeping, that he wants to kill himself “because of it”, he does not like adults or people and he does not like school because of what happened to him.
2. Beau’s second affidavit annexes a statement handwritten by him dated 14 August 2019. He states that he remembers being locked in a room in the Special Education Program at the School. He says that there were loud noises, which he knows were the School’s fire drills. He states that he does not recall being removed from the room when the fire drills were on and he was sure that the teacher left the building and left him locked in the room. He says he remembers calling out, but no-one came.
3. Beau states that he was locked up for two hours at a time and he could not see anyone outside the door. He says that the room was blacked out and no-one could see him unless they were right up against the glass.
4. Beau states that Ms Green, a Special Education Program teacher, told him that she would tell his gymnastics teacher to stop him going if he was naughty at school. Beau says he told Ms Green that she could not do this. He says that the teachers all said it to him.
5. Beau states he got scratch marks when he was dragged into the room. He says he always told his mother about it each day and she would go to admin and yell at them about hurting him.
6. Beau remembers when his mother got locked in the room with him. His mother took him to the administration office and yelled at Ms English, Head of the Special Education Program at the School, and Mr Boss-Walker, the School Principal. Beau says that he talks to his dad about killing himself.
7. The Connor family were in conflict with another family. Beau states that on 29 January 2015, the children from the other family assaulted him and broke his right arm in the toilet block at the School.
8. Beau states that he never put himself in the Withdrawal Room and only went in there when the teachers put him there.
9. I accept that Beau’s affidavits reflect his perception of events and matters at the School, but consider that his perception is likely to be influenced by at least his age (he was between five and nine years old) and state of mind (he was plainly in a disturbed emotional state) at the time of the relevant events. I do not accept that Beau’s teachers deliberately hurt him, that they hated him, that the Withdrawal Room was blacked out, or that they left him in the room during fire drills.

#### Julie Connor

1. There were two affidavits of Julie Connor, Beau’s mother, admitted into evidence. She commenced giving oral evidence-in-chief, but collapsed in the witness box. It was evident that she could not continue. There is evidence that she has Post-Traumatic Stress Disorder (**PTSD**) arising from an incident in 1996. In that incident, Peter Connor’s mother was shot dead by his father. In the same incident, the father shot Julie Connor, wounding her, and shot at Peter Connor. As Julie Connor was plainly unfit for cross-examination, I ruled that her affidavits would be admitted into evidence pursuant to s 64(2) of the *Evidence Act 1995* (Cth)without requiring her to attend for cross-examination.
2. Julie Connor deposes that Beau’s behaviour was problematic from an early age. He would have “meltdowns” where he would cry loudly and scream. These were precipitated by events such as changes in his routine, not liking how someone was behaving towards him, a disciplinary voice being used or an unfamiliar person directly interacting with him.
3. Julie Connor states that in 2011 in Beau’s Prep class at the School, his meltdowns caused problems. In the first week of school, she told Beau’s teacher that he had been diagnosed with ADHD and talked to her about Beau’s meltdowns and how she dealt with them by distracting him. She recalls on one occasion, probably on 2 March 2011 when Beau was suspended for three days, Beau told her another student had been stabbing him with a pencil. She says that the teacher stated that Beau had told her about the incident but that she did not believe him. Julie Connor states that from time to time she would get a phone call from the School to tell her that Beau had been suspended.
4. Julie Connor recalls meeting Ms Lisa Cooper, a regional Advisory Visiting Teacher (Early Years) and Behaviour Management Consultant, who provided support at the School, to discuss strategies for Beau including using “happy faces” and “sad faces” on stickers for Beau so he could indicate how he was feeling. They also discussed diversion tactics. She does not recall any other meeting she attended at the School that looked specifically at Beau’s behaviour management. She had discussions with Beau’s teachers and Ms English about discipline later on in his schooling.
5. Julie Connor states that she never consented to Beau receiving a bear hug when removing him from a classroom. She states that she never consented to Beau being restrained in any other way or for any other purpose. She does not recall the words “Withdrawal Room” being used with her. She states that the idea of Beau being withdrawn from the classroom to settle down or to have a “time out” was “completely acceptable” to her. However, she states that she never consented to Beau being isolated in a small locked room with a single bed and a wall fan and all of the windows blacked out.
6. Julie Connor has produced photographs showing scratches and marks on Beau said to have been caused when he was restrained (although she does not recall the exact dates of the incidents). She describes marks on Beau’s neck which she said looked like “choke” marks from when he was in about Year 4 in 2015, which Beau said were from Ms English placing him in the Withdrawal Room. Julie Connor states that until 13 March 2015, she had no idea that Beau was being placed in the Withdrawal Room.
7. Julie Connor states that she removed Beau from the School after his last “assault” in August 2015. This appears to be a reference to the allegation that Beau was assaulted by parents from the family that the Connor family was in conflict with. This incident was reported to the Queensland Police. A statement was provided by Ms English and Mr Bulger, a Deputy Principal at the School, to the police. She believes that they said they “didn’t see a thing” as a cover-up because Beau was not being fully supervised.
8. Julie Connor states that at the end of each year she asked the School to let her know who would take Beau’s class the following year, but that never occurred. She wanted Beau to meet the new teacher and spend some time in their classroom to transition for the following year.
9. Julie Connor states that the School did not want to acknowledge that Beau had a disability because on one occasion she was told by Ms Christie, a Deputy Principal at the School, that unless Beau was diagnosed with ASD he would not get assistance at the School. She said she did everything in her power to get that diagnosis.
10. Julie Connor states that towards the end of 2012 Beau was having some difficulties with his medication due to a growth spurt. This resulted in Beau being suspended numerous times. She said that she came to an agreement with the School that she would pick Beau up at 11 am every day, which ended in Term 3 of 2013, when Beau returned to full school days.
11. Julie Connor refers to an assessment being carried out by Ms Schloss, a Guidance Officer at the School, in a report she wrote dated 27 February 2013. She says that no proper assessment was carried out on Beau and that Ms Schloss was not properly qualified.
12. Julie Connor’s recollection is that almost every day throughout 2013, she and Peter Connor were called to attend the School to collect Beau because of a meltdown. In respect of the incident on 6 February 2013, Ms Christie and Mr Bulger told her that Beau had to be physically removed as he had a meltdown. She says that she did not receive any response or information about the cause of any of Beau’s meltdowns.
13. Julie Connor states that at one stage, she offered to sit in the classroom to help with Beau’s behaviour, but was told by a Deputy Principal at the School that this was not allowed by the School, even though she and Peter had done this previously. She states that she was never given any work by the School for Beau to do during his suspensions. She said she only ever collected “readers” from his class, but this was done on her own initiative.
14. Julie Connor states that in 2014, she attended the class most mornings and spoke with Ms Brookes, Beau’s Grade 3 teacher, every afternoon after class to see how Beau had been. Ms Brookes told her that her aim was to avoid Beau being further suspended by the School. Beau was only suspended once in 2014. Julie Connor states that during 2014, she would go into the classroom on most days and assist with Beau. She said that Beau felt more comfortable with her there. She states that in 2014, there was a school support person to assist Beau in class once a week for an hour and this continued into 2015.
15. Julie Connor states that in 2015, she told Beau’s teacher that she was able to come into the class and assist with Beau. The teacher said she did not want her in the classroom. She said she asked for Beau to be removed from that class, but was told that he could not be moved.
16. The Connor family were in conflict with another family, which spilled over into School. Julie Connor states that on 29 January 2015, Beau was “attacked” in the toilet block by the children from the other family and suffered a “green stick fracture” of his arm. She states that she and Peter Connor went to the office and spoke to the Principal, Mr Simon Boss-Walker, but he denied that the incident had occurred. Julie Connor states that she requested the School to arrange for Beau to be supervised during play time, breaks and around the toilet. Supervision was undertaken by Mr Bulger and Ms English.
17. On 13 March 2015, Julie Connor was called to the School because Beau was misbehaving. She saw that Beau was in a little room huddled over in the corner curled up in a little ball. She asked Beau what had happened and he mentioned that it was the bullying again. She said that as she had been crouched over and speaking to Beau, someone had walked past and closed the door. It was locked. The windows were painted black and some of the windows were boarded up. She said that she yelled for someone to let her out, but Beau said words to the effect, “Don’t do that, they won’t come and open the door”. Beau said he was locked in the room every day. After 20 minutes, she called the office using her mobile phone and someone unlocked the door. She said the woman who unlocked the door, said, “Oh we just thought it was Beau yelling”.
18. Julie Connor said that she went to see Mr Boss-Walker and Ms English. She was distressed and agitated. She told them they could not do this to children. Julie Connor states that this was the first time she knew the room existed. She called the Department of Education.
19. Julie Connor states that on 8 May 2015, she was told that Beau was going to be transferred to the SEP because the program could give Beau more support. She says that she complained to Ms Green, Beau’s teacher at the Special Education Program, that the work Beau was being given was not challenging him as it was only at Grade One and Two level. She says that Ms Green told her that she wanted all her students doing the same level work. She does not believe that this was adaptive to Beau’s needs.
20. Beau was again suspended on 12 August 2015. She attributes this to Beau being accused of lying about an incident involving an alleged assault by the parents from the other family the day before.
21. Julie and Peter Connor decided to move Beau to Urangan Point State School in August 2015. She states that Beau thrived at the new school and received merit cards for good behaviour. She said that Beau was never suspended from the new school. Julie Connor annexes a letter from Julie Phillips, a disability advocate in Victoria concerning a different child. The letter indicates that intensive psychological interventions or behaviour analytical interventions have a high rate of success. It indicates in the case of the other child that the school chose not to get any professional assistance even though it was their responsibility to do so.
22. In her oral evidence, Julie Connor said she suffers from PTSD and dyslexia. She did not explain the extent of her dyslexia. She did not give evidence that she was unable to understand any of the documents given to her by the School.
23. Julie Connor gave evidence that she never discussed the shooting incident or the injuries she sustained with her children. She said they did not need to know and she wanted to protect them.
24. My impression is that Julie Connor is a caring and devoted mother who has tried her utmost to provide Beau with opportunities for his education and social development. That is demonstrated by her frequent engagement with his teachers, her willingness to assist with Beau in class and her openness to various strategies suggested by the School. A number of the teachers state that they enjoyed a good relationship with Julie Connor. However, in 2015, her attitude to the School seems to have changed. As far I can tell, that seems to have been precipitated by the event of 13 March 2015 when she was accidently locked in the Withdrawal Room with Beau and by a belief that staff at the School were taking the side of the family that the Connor family was in conflict with.
25. There is some conflict between the evidence of Julie Connor and the evidence of witnesses called by the State. The evidence of the State’s witnesses tended to be supported by contemporary documents. Julie Connor’s affidavit evidence tends to be somewhat vague, her affidavits having been prepared some years after the relevant events. Further, the weight to be given to her evidence is affected by the State’s inability to cross-examine her. In addition, her evidence was far from objective, being coloured by her role as a mother. She too readily accepted the accounts provided to her by Beau and dismissed the observations of teachers to the contrary as fabrications. For example, where Beau alleged that the parents from the other family assaulted him at the School, but Ms English and Mr Bulger provided a statement to police that they had witnessed no such assault, Julie Connor concludes, quite unreasonably, that they were covering-up the assault. I accept that Ms English and Mr Bulger were telling the truth. Some parts of Julie Connor’s evidence were exaggerated. For example, she said she or Peter Connor were called to the School almost every day in 2013 to collect Beau, when the records do not support that assertion. I prefer the evidence of the State’s witnesses where there is conflict.
26. In her oral evidence, Julie Connor denied that Beau was aware of the incident in which his grandfather shot her. She was not able to be cross-examined about this evidence because of her breakdown in the witness box. However, I note that on 11 February 2014, Ms Brookes, a teacher at the School, made a record of a discussion in which Julie Connor said that she had been the victim of a crime in which she had been harmed by Beau’s grandfather. Ms Brookes recorded that Julie had discussed the details openly in front of her children. I accept the accuracy of Ms Brookes’ note, since she could not have known about the incident unless Julie told her. It follows that Beau was aware of the crime perpetrated against his mother.
27. There is also a note dated 11 February 2014 in the School’s records indicating that a password had to be given before anyone other than persons known to the School would be allowed to pick up the Connor children. This was because Julie Connor’s father was “at the jail” in Maryborough, and his girlfriend may have been following Julie and so may have been aware of where the children went to school. Julie Connor was unable to be questioned about whether Beau was aware of those issues.

#### Peter Connor

1. Peter Connor has affirmed four affidavits. He was cross-examined.
2. In his first affidavit, Peter Connor said he attended Beau’s classroom numerous times in 2012 to assist him. This was during a period when Beau was attending school only from 9 am to 11 am. He recalled various events where Beau was upset at the School and one when his arm was broken by the boys from the other family.
3. In his second affidavit, Peter Connor deposes that he did not consent to the School and its employees physically restraining Beau or depriving him of his liberty. He said that he was not aware that Beau was being restrained or deprived of his liberty. He states that he was never shown the “time out room”. He states that he believes the School took advantage of Julie Connor’s “intellectual impairments”. He did not explain what these impairments were or how they were taken advantage of.
4. Peter Connor’s third affidavit annexes a letter of instruction to Daniel Wendt, a clinical psychologist, and several medical reports.
5. Peter Connor affirmed a fourth affidavit, which is largely responsive to the affidavits of the State’s witnesses. In large part, it is simply argumentative, but, relevantly, he deposed:

I believe Beau suffers from Anger management issues, which is common in our family. I believe Beau gets so “worked” up he goes into “White rage” Where he cannot be controlled, and this is evident by his teachers saying it “takes two to hold him down or carry him”.

(Errors in the original.)

1. I accept that Peter Connor is a genuine and caring father. He is very protective and defensive of his family and angry about Beau’s treatment at the School. It is evident that his protective attitude stems in part from his own experiences of having a violent father and his perception of harassment by the police and ill treatment by the criminal justice system. He gave oral evidence of having been shot at by his father and of what he claimed was 20 years of police harassment and victimisation.
2. In his oral evidence, Peter Connor said he not been involved in the management and behaviour plans implemented by the School, as they took it upon themselves to implement these plans. It became apparent that Peter Connor had little involvement with the staff at the School, other than for a period in 2012 when he attended class with Beau, when he picked Beau up from time to time and when he attended about two meetings.
3. Peter Connor believes that Beau was treated very badly by the School. He is focussed, not only upon Beau’s suspensions and the use of the Withdrawal Room, but upon other perceived injustices. He seems particularly aggrieved by the incident where Beau claimed he had been assaulted at the School by the parents from the family the Connor family was in conflict with. Peter Connor also alleges that two teachers lied in a statement to police when they denied that they had seen the parents of the other family assaulting Beau.
4. A number of the allegations made by Peter Connor against teachers at the School are clearly fuelled by his anger and were not supported by any reasonable view of the circumstances disclosed by evidence. He made some outrageous, and no doubt hurtful, accusations against the teachers without evidence. For example, he asked one witness whether it was a regular occurrence at the School for senior staff members to, “try to intimidate small children while they were alone” and accused the witness of, “deliberately winding (Beau) up and then choosing to restrain him”. He accused a teacher aide of breaking Beau’s arm by dragging him and not recording it in OneSchool because she did not want a record of the event. He asked another teacher whether she looked down upon Beau because of his disabilities. She responded:

Mr Connor, I have two children with disabilities myself. I don’t believe in looking down on any child with a disability.

1. In my opinion, Peter Connor lacked perspective when giving his evidence and presenting the case. He displayed no understanding of the difficult circumstances and conflicting duties that the teachers who dealt with Beau were faced with. His evidence ultimately had limited bearing upon the issues to be decided because he had limited contact with the teachers and the School. Julie Connor had most of the dealings with the School regarding Beau.

#### Margaret Webb

1. Margaret Webb describes herself as an expert professional teacher and behaviour and disability expert. She has a Bachelor’s degree in Inclusive Education and Disability Studies, a Master’s degree in Education and a Master’s degree in Teaching from the Australian Catholic University. She is accredited as a teacher.
2. Ms Webb has prepared a report critiquing a Class Behaviour Management Plan dated 27 February 2013 and an Individual Curriculum Plan for Semester One, 2015 developed by the School, which Ms Webb refers to as the “Individual Education Plan”. Her comments are somewhat repetitive, so I will provide only a summary of them.
3. Ms Webb states that adjustments made for Beau by the School were extreme, using a withdrawal room which was often blacked out and used against his will. She states that it seems his diagnosed disability provided “justification” or “motivation” to use this form of behaviour management.
4. Ms Webb states that Beau’s teachers prevented him from accessing all opportunities in the classroom by locking him in the Withdrawal Room. The teachers did not meet Beau’s needs by failing to make modifications to their teaching methods. She says the Individual Education Plan fails to show evidence that the School made reasonable adjustments to the learning environment to support his sensory processing disorder or his diagnosis of autism.
5. Ms Webb said there was little evidence of curriculum modification and adaptations which would have allowed full access to learning opportunities for Beau. Ms Webb states that the School used punitive behaviour strategies such as locking Beau in the Withdrawal Room (at times in the dark).
6. Ms Webb states that Beau’s parents did not have significant input into the strategies the School was using. They were not consulted on aspects of behavioural management decisions. She states that the School’s failure to provide reasonable adjustments ultimately impacted upon Beau’s inclusion as a student and a valued member of the class. She says the impact on Beau included that his ability to achieve learning outcomes was reduced, that he was locked up, thus impacting on his social development and sense of belonging, and that he was devalued and viewed negatively by his peers as a result of his treatment by the School. Further, no adjustment was made to take into account the interests of the child (ie climbing trees) and no adjustments were made to learning based on his interests.
7. Ms Webb states that Beau was not provided with the right to participate in courses and programs designed to develop his skills, knowledge and understanding on the same basis as other students without disabilities. That was because his Individual Education Plan clearly showed that the focus of intervention was around him complying with staff, whereas it should have been to work collaboratively with his family to develop a plan to meet his individual needs with a strong focus on goals and strategies.
8. Ms Webb states that Beau was unable to access learning when he was locked away in an isolated room, which excluded him from class, impacting upon his opportunity to obtain learning outcomes and develop and maintain friendships. This created a negative perception of Beau and further marginalised him.
9. Ms Webb states that no Functional Behaviour Analysis was conducted to identify the triggers leading to Beau’s problematic behaviours. She explains that the School’s hypothesis for Beau’s problematic behaviours was that he wanted to avoid work and “be sent home”, but this suggests that the School did not have an understanding of the purpose or function of his behaviour. She further states that it shows that the School put the problem with the child rather than identifying some of the triggers that may have led to certain behaviours being presented. Additionally, one of the key points on the Individual Education Plan showed that “Beau wanted to be liked by others” and “wanted to have social connectedness”, yet he was placed in a situation where he was seen as devalued and problematic by his peers, which affected the way he formed or maintained relationships with them.
10. Ms Webb states that the Behaviour Plan showed little or no evidence of preventative, adaptive or reactive strategies that the School could use to support Beau. She further states that the Behaviour Plan showcased very little knowledge of certain characteristics and known strategies that would have supported a student with Autism or ADHD, including sensory learning, time positive reinforcements, social stories and peer support, etc.
11. Ms Webb states that it is evident that the School failed to make reasonable adjustments to meet Beau’s needs. The Individual Education Plan and Behaviour Plan show that the School had not considered Beau’s sensory processing disorder, his diagnoses of ASD, ADHD and anxiety, his sensory needs, adaptations and modifications, the environment, his communication skills, personal characteristics, learning needs or his social roles. She says that punitive measures to manage Beau’s behaviour were inappropriate and violated his human rights through victimisation and harassment while using exclusion and devaluation practices. Ms Webb states that the School failed Beau and his family and had not made the adjustments necessary for Beau to feel included and accepted or even able to participate at the School.
12. Ms Webb states that the Individual Education Plan shows many flaws in the School’s attempts to meet Beau’s needs. The Individual Education Plan states Beau’s triggers are difficult to define, but known triggers have been left out. She says that for example, it was shown that Beau liked to climb trees and furniture and that he wanted to fit in with others as a strength, but the School instead used an isolated room to manage his behaviour. She states that the use of the room was a trigger.
13. Ms Webb states that the Individual Education Plan placed Beau as the person responsible to action strategies and suggested that he self-regulate his responses, an expectation which went against his cognitive ability as a young child. She states that self-regulation is an unrealistic expectation of most young students and again places the problem with the child.
14. She states that the Individual Education Plan did not show any evidence of preventative strategies the School could have used to identify the function of Beau’s behaviours. There appeared to be a few strategies that would support a student with autism. She states that Beau could have benefited from preventative strategies including visual stimulus, communication aids, sensory fidgets, cushions for sensory stimulation, assistive technology, interests being included in his learning, adaptation and modification of learning tasks and constant positive reinforcements.
15. Ms Webb states that, as an expert in education and disability, she is disappointed that the School’s Behaviour Plan and Individual Education Plan showed little or no evidence of adaptation and modification to the curriculum, adaption or modification of environment, or adjustments made to support the triggers leading to problematic behaviours.
16. In its closing address, the State submitted that Ms Webb should be found not to be an expert in disability and education. However the State had not objected to the reception of her opinion evidence on such a basis. Further, there was only a very limited and indirect challenge to her expertise under cross-examination. In view of the limited nature of that challenge, I am unable to find that she is not an expert.
17. However, Ms Webb was not objective or dispassionate. At one stage she referred to herself as, “being a voice for Beau Connor”. Under cross-examination, Ms Webb was asked whether she saw herself as a disability advocate, but she denied that she was. When asked why she described herself on her Twitter account as an advocate for people with disabilities, she gave a confusing answer, the effect of which was that just because her Twitter account said she was an advocate did not mean that she was. Ms Webb’s evidence tended to consist of long rambling statements, much of which were not directly relevant to the issues in this case. She seemed to regard the opportunity to give evidence as a platform for her advocacy of the interests of people with disabilities.
18. The documents Ms Webb was initially provided with were an Individual Curriculum Plan for Semester 1, 2015 and the Class Behaviour Management Plan dated 27 February 2013. Ms Webb spoke to Ms Connor for a total of 15 to 30 minutes, predominantly about, “her own story of her being locked in the cage”. She did not see any of Beau’s other school records.
19. Ms Webb was not provided with the voluminous records about Beau kept on the State’s OneSchool database. Ms Webb had little information as to the level and nature of the behaviours that led to Beau’s exclusion from the classroom, the strategies that the teachers would use to manage his behaviour before excluding him from the classroom and the more general implementation of strategies to assist Beau with learning and behaviour. In view of the lack of salient information provided to Ms Webb, it is apparent that a number of the statements in Ms Webb’s report about Beau’s treatment and the absence of strategies to assist him were based upon assumptions, rather than factual information, about what had or had not happened. In light of the lack of information Ms Webb had access to, her opinions cannot be regarded as reliable.
20. Some of Ms Webb’s suggestions were simply unrealistic. For example, she repeatedly emphasised Beau’s interest in climbing trees as a tool for learning, but ignored the obvious physical dangers involved in allowing him to climb trees within the School grounds.
21. Ms Webb’s tendency to give her evidence as an advocate for Beau, together with the lack of an adequate factual basis for her opinions, makes her opinion evidence unreliable. I give little weight to her opinions.

#### Daniel Wendt

1. Mr Daniel Wendt is a Clinical Psychologist. He examined Beau on one occasion and provided a report dated 3 July 2019.
2. Mr Wendt states that Beau described being fearful and intensely distressed on multiple occasions at the School due to his direct exposure to being placed in seclusion, with the door locked, against his will.
3. Mr Wendt reports that Beau expresses ongoing fear for himself and his family. He refuses to sleep in the dark or enter small or confined rooms or spaces as they remind him of the incidents. He has negative thoughts about life and considers suicide at times. Beau regularly experiences irritability, anxiety, hypervigilance, difficulty concentrating and disrupted sleep.
4. Mr Wendt’s opinion is that the events at the School have had a lasting negative impact on Beau’s mental health and psychological wellbeing. While Beau’s ASD and ADHD were likely to impact upon him socially, it is Mr Wendt’s opinion that the incidents at the School further impaired his social skills. He is likely to require supported employment for the foreseeable future. Mr Wendt states that Beau’s ability to move freely in the community with independence is impaired, beyond what would be expected due to his ASD and ADHD.
5. Mr Wendt states that the events at the School appear to have taught Beau that he cannot trust other people. He was in the care of staff members at the School and they reportedly did not keep him safe. In fact they allegedly placed him in distressing situations directly against his will on multiple occasions. As a result, Beau has learnt that even individuals in positions of trust and authority do not necessarily provide security. This leaves him often doubting other people, questioning their motives or preparing for his own safety.
6. Mr Wendt states that without sustained and long term professional treatment, Beau’s presentation is unlikely to change. Even with professional support, it would be expected that progress would be slow.
7. Beau told Mr Wendt that if he was in trouble at the School, he was yelled at by teachers. When he refused to go to the Withdrawal Room, he was picked up/dragged and taken there. He would try to fight back and try to get away when they tried to put him in the Withdrawal Room. He said he never went in there when they told him to because he did not like it there. Beau says he thinks about this at times and it is scary. Beau noted that he was held down at times, which resulted in him vomiting. He was scratched by a staff member on one occasion and remembers being hurt when he was handled by the School staff. He said he could barely see when the lights were off in the room and this made it scarier.
8. Mr Wendt states that Beau’s signs and symptoms and reported history are consistent with PTSD. He said that the events as described at the School appear to have had a lasting and significant impact on Beau’s life.
9. Mr Wendt says that it is his understanding that the act of secluding someone with a disability against their will is considered a “restrictive practice”. He said he was not aware of what actions or approvals took place and was not aware of any positive behaviour supports that were put in place by the School or any Behaviour Management Plans developed for Beau. He said that it was best practice to implement positive behaviour management strategies when working with individuals with disabilities in order to avoid, reduce or eliminate the use of restrictive practices.
10. Mr Wendt’s report suffers from several deficiencies. He was provided with a letter of instruction and a number of occupational therapy, medical and other reports. Only three of these reports were prepared at a time when Beau was at the School. Mr Wendt was not provided with the School’s records containing accounts of the various incidents. Mr Wendt was not given access to accounts about the behaviours that resulted in Beau being restrained and placed into the Withdrawal Room. He was not given information that showed that Beau reacted in a similar way when he was removed to places other than the Withdrawal Room, such as to the Principal’s office.
11. Mr Wendt relied upon the reports of Beau and his parents as to the circumstances in which he was placed in the Withdrawal Room, the length of time he was placed there and the conditions in the room. Mr Wendt seems to have assumed that Beau did not become distressed until he was told to go into or threatened with being taken to the Withdrawal Room.
12. In addition, Mr Wendt was unaware of the trauma suffered by Julie Connor at the hands of Beau’s grandfather and was unaware that Beau knew of that trauma. As a result, Mr Wendt did not consider whether any of Beau’s symptoms could be attributable to that knowledge.
13. In my opinion, Mr Wendt’s lack of access to information from sources other than Beau and his parents makes his opinion unreliable.
14. Further, Mr Wendt’s diagnosis of PTSD appears to have been based on a view that Beau was exposed to trauma that was equivalent to being kidnapped. I cannot see that the analogy was appropriate in circumstances where Beau was taken only a short distance to the Withdrawal Room, within the School that he was familiar with, by people he was generally familiar with, and told that he could signal that he was ready to come out by sitting on the mat. I consider that there is an insufficient basis for Mr Wendt’s diagnosis of PTSD due to Beau being restrained and secluded in the Withdrawal Room.

### The State’s witnesses

1. The State called 18 witnesses to give evidence. The evidence-in-chief of all the witnesses except one was given by affidavit. The witnesses were:
* Ms Ingrid Bradford (Grade 1 Teacher);
* Ms Tanya Jensen (Grade 2 Teacher);
* Ms Rachael Brookes (Grade 3 Teacher);
* Ms Lorna Clarry (Grade 4 Teacher);
* Ms Mieka English (Head of the Special Education Program);
* Ms Debbie Olsen (Teacher Aide, Special Education Program);
* Ms Tammy-Anne Stevens (Teacher Aide, Special Education Program);
* Ms Robyn Gorlick (Teacher Aide, Special Education Program);
* Ms Narelle Green (Special Education Teacher);
* Ms Barbara Christie (Deputy Principal);
* Ms Jan Pitt (Deputy Principal);
* Ms Leanne McNamara (Deputy Principal);
* Mr Matthew Bulger (Deputy Principal);
* Ms Janette Schloss (Guidance Officer);
* Ms Lisa Cooper (Regional Advisory Visiting Teacher (Early Years) and Behaviour Management Consultant);
* Mr Michael Fay (Principal);
* Mr Simon Boss-Walker (Principal);
* Ms Leisa Staunton (Head of the Special Education Program at Urangan Point State School).
1. Peter Connor vigorously cross-examined the witnesses. He sought to impugn their credibility. He accused most of them of deliberately targeting and discriminating against Beau because of his disabilities. In his submissions, he alleged that most of them were giving false evidence.
2. The witnesses called by the State had varying degrees of recollection of the relevant events. That is not surprising as the relevant events happened between four and eight years before the trial, and they had varying levels of involvement with Beau at the School.
3. A number of witnesses gave evidence that records kept in a database known as “OneSchool”, maintained by the Department of Education, were consistent with their recollections. In the database, a profile is created for each individual student. A profile may contain sections for records of contact with parents, achievement results, behaviour records, specific education requirements and attendance details. It was the practice at the School that all major behavioural incidents would be recorded. In Beau’s case, the database also contained medical and other reports that were provided to the School.
4. Beau’s OneSchool profile records dozens of behavioural incidents. The entries were created by one or more of the staff members involved in each incident. Each entry provides a contemporary record of what happened. Where evidence of the incidents was separately given by witnesses, that evidence was generally consistent with the entries. I accept the entries as being accurate accounts of each incident.
5. Peter Connor tended to pick up what he asserted to be discrepancies within or between the evidence of witnesses and attribute them to witnesses giving deliberately false evidence. However, the discrepancies he relied upon tended to be non-existent, trivial or explicable by lapses in memory.
6. Having heard and seen the State’s witnesses give evidence under cross-examination, I am satisfied that each of them gave their evidence honestly and generally reliably. While there may have been some minor lapses in the evidence of some of the witnesses, I am not satisfied their evidence was displaced or damaged by cross-examination. I reject the suggestion made by Peter Connor that witnesses were dishonest and had deliberately targeted Beau and did so because of his disabilities or animosity towards him. I reject the suggestion made by Peter Connor that the teachers acted unprofessionally or maliciously towards Beau. I accept that in their dealings with Beau, each of the State’s witnesses did their best to assist him while having regard to their obligations for the safety and education of other students. I consider that each of them carried out their duties in a professional and caring manner.
7. Peter Connor criticises the State for failing to call some witnesses who might have had relevant evidence to give. These include Ms Alison Ryan (Prep Teacher), Ms Katrina Linford (Relief Teacher) and Ms Sandra Hinton (Relief Teacher). The State did not offer any explanation for their absence: cf *Kuhl v Zurich Financial Services Australia Ltd* (2011) 243 CLR 361 at [63]. Even so, these witnesses played a fairly minor role in the context of the case as a whole. In the case of Ms Linford and Ms Hinton, they each made a record of a behavioural incident in the OneSchool records. No specific challenge was made to those records and no evidence was led to the contrary, and I see no reason to doubt that they accurately recorded the relevant incidents.
8. Peter Connor’s final submissions included allegations of breach of duty of care, assault, breaches of workplace health and safety and fire regulations, and criminal conduct. As I have said, to the extent that these matters are relied on as separate causes of action they have not been pleaded and cannot be relied upon. However, some of the factual premises underlying these allegations may have relevance to the pleaded allegations of discrimination and, to that extent, will be considered in the course of these reasons.

## Findings of fact

1. I will set out some of the evidence which I accept and consider to be directly relevant to the disposition of the allegations made in the statement of claim. It is not possible to fully describe all the behavioural incidents, strategies and interventions used by the teachers and communications with parents and outside agencies that bear upon the issues. There are literally hundreds of entries and documents in Beau’s OneSchool records. The limited amount of evidence I am able to set out cannot adequately describe the difficult issues in relation to Beau that the School dealt with, and the ways they were dealt with, on a daily and ongoing basis. The recitation of the incidents that follow should not be taken to suggest that they reflect only isolated events.
2. It should also be noted that on each occasion where a record of a behavioural incident was made in Beau’s OneSchool profile, the strategies used to manage Beau’s behaviour were also recorded, apparently by selecting options from a drop-down menu. I accept that the strategies recorded were employed, but, for the sake of brevity, do not propose to include them in the extracts from the OneSchool records that I will set out.

### 2011

1. In January 2011, Beau commenced his Prep year at the School. His teacher was Ms Alison Ryan.
2. Ms Leanne McNamara was one of three Deputy Principals at the School in 2011. She was aware that Ms Ryan, and teacher aide, Ms Janet Walker, were experiencing physical aggression from Beau.
3. On 2 March 2011, there was an incident recorded in OneSchool by Ms Katrina Linford, a relief teacher, and Ms McNamara:

Report from Katrina Linford (Relief Teacher).

“When I Arrived at Prep W at 9.30, Beau was having time-out on the “thinking mat.” As he continued to be anti-social, I decided to tactically ignore him and focus on my lesson. At one stage during the lesson Beau rolled/crawled over to the sliding door. While lying there he began to move the door back and forwards. I asked him to stop because it was too hot and I didn’t want him hurt. He ignored me so I stood and held the door. He immediately punched me in the leg and when I didn’t move he kicked me twice in the leg. I moved away and rang the office”

Report fro Deputy

Beau was sitting by the door when I arrived. I asked him to come with me. When he did not move. I took him by the hand. He reacted by pulling away, swinging his arms wildly, knocking my spectacles off. I took Beau outside, with him yelling at me, resisting and trying to grab onto the rails etc.

We proceeded a short way along the walkway and then I sat him down on a gymnastic mat that was there. He kicked me, scratched me and spat at me. He also frequently tried to bite me. I restrained him on the mat for approximately 10-15 minutes before he calmed enough to indicate that he would like to go for a drink. I took him by the hand and walked to the taps. We then proceeded to my office. Beau continued to wail at the top of his voice. The principal heard Beau approaching and met us in my office. When he was spoken to by the principal, Beau again began knocking things off my desk and then kicked, punched and spat at the principal. The principal had to restrain him for some time before he settled enough to remain sitting on the floor by himself. Parents were contacted and his father came to collect him.

(Errors in the original.)

1. Following this incident, the Principal, Mr Michael Fay, decided to suspend Beau for two days.
2. In early 2011, Ms McNamara started to increase the frequency with which she saw Beau to provide him with positive encouragement. She said she realised that it was necessary to set firm boundaries so that Beau knew that he was not always going to be sent home if he misbehaved. She said that the teachers tried to persevere through Beau’s outbursts to set those boundaries, and these strategies were effective, together with positive reinforcement of good behaviour. Ms McNamara said that she had a good relationship with Julie Connor. Their discussions were constructive.
3. Ms McNamara recorded an incident that occurred on 22 March 2011:

When beau was dropped off to school he immediately kicked his teacher in the shin. As Mum left Beau commenced an angry display of wanting to destroy everything around him. He commenced screaming. Beau was restrained by teacher and removed to a quiet private location and Beau commenced kicking, biting, pinching and spitting at both the teacher and aide. Beau did not stop screaming. Beau was carried by DP to the office (restrained) where he continued to scream, pinch DP’s hands and require restraining to prevent him from destroying the environment.

Beau continued to spit with DP and child totally covered in spit. When Mum arrived (after nearly 50min) Beau immediately stopped screaming and stood silently beside his mother. Once he knew he was going home, he stopped his angry behaviour. Mum advised that any aggressive behaviour towards staff would mean he would be sent home.

1. Ms McNamara specifically recalls the incident because Beau’s pinching of her hand was painful and he was spitting at her. Ms McNamara stated it was “quite remarkable that once his mother arrived, he just switched his behaviour off”.
2. Ms McNamara made a record of an incident that occurred on 25 March 2011:

Beau was brought to office under the pretense of sharing good work to speak with DP regarding previous physical outburst that resulted in him being sent home.

Beau was shown the significant physical marks left by his continuous pinching of DPs hands and whilst being told this behaviour was not aceptable anywhere (voice was low but firm) Beau started to scream and hit at DP and the environment around him.

Beau was removed immediately into the principal’s office where both the principal and upper school DP assisted in restraining Beau.

During this time distraction attempts were made, attempts for Beau to stay within a given space and not be restrained etc however Beau made purposeful choices to be defiant. He was NOT ‘not in control’ of his rage. He turned it on and off at various times through the 1hr 15min outburst.

Beau made grunting and growling sounds when spoken to and continually tried to destroy the environment around him. He was particularly focused on a coffee cup on the desk and made numerous attempts to whack it off the desk.

He stood with his arms crossed and refused to talk when being encouraged to either sit on the floor or a chair. He was not going to be told to move. It was only when he was told he would have to stay after school that he turned off the screaming and physical aggression and moved himself to the chair.

Beau was then told he would be staying unless he responded verbally to principal with “yes Mr Fay” and “good afternoon Mr fay/Mr Suter etc”.

Beau chose to comply and calmly walked back to his class with DP.

An interview with mum followed to complete a functional behaviour assessment checklist.

(Errors in the original.)

1. Ms McNamara states that the incident on 25 March 2011 was particularly significant for her because she had to do more restraining than usual to keep Beau safe. She said that Beau was very strong and loud (using his voice at a piercing volume) and the pinching of her hands and arms was quite severe. Ms McNamara says that restraining a child in that way was extremely distressing for her, but there were no other options. Ms McNamara went home after the incident with open wounds on her hands and arms and covered in spit. The pinching of her arms caused scars, which lasted for quite some time. After the incident, she was shaking and felt nauseous. She needed a shower to cleanse herself and help her to calm down.
2. On 29 March 2011, Ms Janette Schloss, a Guidance Officer, and Ms McNamara conducted a Functional Behaviour Assessment interview with Julie Connor, who described problems that Beau had since he was about two years of age. This included spitting, biting, pulling hair, pinching hands and swearing when angry. She noted that sharp knives had to be taken out of the drawers at home. She said that there were no real triggers for the behaviour and it was unpredictable, but they occurred when he felt like he was in trouble. It was noted that Beau’s behaviour could be affected by loud noises, big groups of people and change.
3. Ms McNamara said that all the occasions when Beau had to be removed from the classroom and restrained were in direct response to his behaviour and were necessary to keep him safe. She said that there was also a high risk of him harming other children and staff when he became violent and aggressive.
4. Ms Lisa Cooper, a Behaviour Management Consultant, attended the School in June 2011, following a request for support. The School’s concerns were with Beau’s tantrums when he was asked to do tasks he did not want to do and wilful destruction of property.
5. Ms Cooper observed Beau in the classroom and provided strategies to Ms Ryan. The strategies included a need to establish routines, rules and consequences, the need to connect with Beau and the importance of using visual aids and encouraging Beau to communicate his feelings in an appropriate way. The support provided by Ms Cooper continued during 2011.
6. On 24 June 2011, Ms Schloss wrote a letter to Dr Gillian Watterson, a paediatrician, in response to her request for information about Beau. In that letter, Ms Schloss said:

Beau’s behaviours at school show a tendency to be physically violent towards people and his environment when he does not get his own way. The violence is in the form of kicking, punching, biting, pinching and spitting on people who are not allowing him to be in control. Beau also tries to destroy and damage other people’s property…Staff at Kawungan State School have observed Beau making conscious choices about his behaviour. His actions for not getting his own way are controlled and deliberate. At this stage there is not enough evidence of Beau displaying autistic characteristics to warrant conducting an official checklist. However, staff continue to monitor Beau’s behaviour on a daily basis. Should we feel that autism would account for Beau’s difficulties then a checklist will be completed.

1. On 30 November 2011, Dr Watterson wrote to Dr Gilliland, who appears to be a general practitioner, and the report was provided to the School. Dr Watterson referred Beau to a psychologist, as she felt that Julie Connor desperately needed some support to manage Beau’s very difficult and challenging behaviour.

### 2012

1. In January 2012, Beau commenced Grade 1. His teacher was Ms Ingrid Bradford. Ms Bradford does not recall Beau being disruptive or non-compliant in the first three terms. Occasionally he would have separation issues where he would try to follow his mother when she dropped him off at the classroom. Ms Bradford would hold Beau in a calming bear hug until his mother left. It would take two to three minutes for Beau to settle and then she would have no problem with him for the rest of the day. She recalls that Julie Connor agreed that she should give him a bear hug to keep him in the room.
2. Dr Watterson wrote to Dr Gilliland on 15 June 2012, referring to Beau as being medicated for ADHD and ODD. She noted that Julie Connor was also pursuing a possible diagnosis of ASD with a psychologist and a paediatric occupational therapist.
3. Ms Kate McCarthy, an occupational therapist, provided a report dated 12 July 2012 to Julie Connor, and a copy was given to the School. Ms McCarthy said that Beau had attention difficulties, and suggested trialling a number of adjustments in the classroom such as playing background music, varying where Beau sat in the classroom and allowing Beau to hold a fidget toy. Ms McCarthy observed that Beau missed a lot of auditory cues, and suggested that a number of adjustments could be trialled, including teaching Beau to ask others to slow down, speak up or repeat what they said, using visual cues to support movement activities, having Beau repeat or explain information, providing feedback to Beau when it looked like he was mentally drifting, providing information in a picture format and using scented markers or pens. Ms McCarthy concluded that Beau’s results indicated he had a pervasive developmental disorder consistent with possible Asperger’s Syndrome.
4. Ms Bradford recalls that there was a marked change in Beau when he returned to school in Term 4. Ms Bradford recorded an incident on 8 October 2012, the first day of Term 4:

Beau was dropped off to the classroom by his mother, Julie just after the start bell. Mum left quickly and Beau wanted to follow so I had to restrain him in a bear hug so he would not run after her. I held him for a moment thinking he would settle but he did not. When I took him to his desk to sit him down he just walked and grabbed whatever he could and threw it across the room/floor. He tried to kick and walk on the things he threw around the room, I restrained him again in a bear hug but he continued to fight me. Each time I thought I could get him seated he would throw something else. I tried to get him to a time out area (safe area) in the back room but he continued to destruct the things around him so I had to hold him again until help came. This went on for 5 or so minutes. Jeff Harper and Wes came in to take him out of the room and to try and settle him. Eventually Jan Pitt and Brent H came to take him to the office. Mum and Dad came and took him home.

The whole class witnessed this behaviour this morning.

Throughout the year Beau has had moments where I have had to restrain him while Mum leaves. Beau has always settled within 3 to 5 minutes of Mum leaving and I would have no problems with him but today was very different. This is the first time l have seen him being destructive.

1. Ms Bradford states that the school cleaner and one of the groundsmen came in to help her with Beau. They were able to take Beau out of the side door of the classroom and sit with him in the covered area until the Deputy Principal Jan Pitt and Brent Heinigar arrived and took Beau to the office. She had never previously encountered this type of behaviour from Beau.
2. Ms Bradford recalls that Beau was very unsettled and disruptive for the first week of Term 4. She recorded an incident on 15 October 2012 as follows:

Beau arrived to school with his mother Julie. We both directed Beau to his desk but he wanted to hold onto Julie so I took his hand as she left. Once again I directed him to his table and gave him a choice and also told him that he if left the classroom I would need to call Mrs Pitt. He choose to walk around a little before sitting at his desk. I praised him quietly once he settled himself at his desk and asked him to take out his book ready for spelling. Beau refused to do this and just played with his pencils in his tidy tray. (I noticed last week and today that he would straighten out his pencils and rubbers on his washer in his desk and would spend some moments doing this) I let him be and continued to teach giving him some time to have a think and hoping he would join in with the activity. A few moments later I quietly walked over to his desk and helped him find his book. I wrote the spelling words in his book for him to copy and as I walked away he began to scribble over [name redacted]’s spelling book. I told him this was not a nice thing to do and with that he began to scribble over his desk, [name redacted]’s desk and [name redacted]’s desk. I took his pencils off him and then he just found more in his tidy tray to use. He then began to try and rip off the alphabet charts from his desk. I gave him a choice to stop his behaviour however he decided to continue with the scribbling on the furniture. Another child [name redacted] also said that he threw a pencil in his direction. I sent two children to go and get Jan Pitt as I could see he was not going to settle down. Jan and Brent came in and tried to calm him and get him back on task as I taught the class. Beau refused to listen and he began to kick and become non compliant. He was then taken out of the room by Brent and Jan.

(Errors in the original.)

1. Ms Pitt decided to suspend Beau for 10 days as a result of this incident. Ms Pitt deposes that she did so because of Beau’s physical violence, destructive behaviour and non-compliance, as well as for the safety of other students.
2. Ms Cleo Eshum-Wilson, a psychologist, provided a report to Dr Gilliland dated 15 October 2012, which was provided to the School. She noted that Beau was described by his mother as being aggressive and showing no remorse. The psychologist concluded that Beau had ADHD traits, but did not display typical ASD traits.
3. On 31 October 2012, Ms Pitt and Mr Fay completed a “Request for Support” addressed to Guidance and Counselling Services—North Coast Region. This was signed by Julie Connor. Ms Pitt also completed a “Referral For Behaviour Support Consultant” at the same time. She thought additional support was required because of Beau’s difficult and aggressive behaviour.
4. On 6 November 2012, Beau again engaged in disruptive behaviour, recorded by Ms Bradford as follows:

Beau arrived to school in a good mood. He participated in the start of the day activities, he spoke quietly to me and I thought we were off to a good start until we started to do our writing activity (9:30). Beau refused to start writing even when I offered to help him begin his writing. I left him and continued to work with the other children hoping he might begin his task. I roamed the room and made my way back to Beau and quietly offered my help again. He refused. He then began to move [name redacted]’s desk, thinking he was going to take it outside through the side door. I walked over and slowly dragged it back to it’s spot and then Beau opened [name redacted]’s tidy tray and began emptying all his belongings onto the floor. He grabbed a of pair scissors and was going to cut [name redacted]’s drink bottle holder. I had to peel his fingers off the scissors and take them off him. He then tried to spill water from [name redacted]’s drink bottle all over the desk. I took this off him. He then started tipping his desk over and started to try and pull the charts off the other children’s desks around him. (note all children sitting around him had been moved to other desks for their safety) I quietly asked him to make the right choices but he continued to move furniture around him. I then called for Jan Pitt to come and help. Jan and myself monitored Beau and gave him time to make a right choice. Beau continued to mess things up and he then tried to tip up the whiteboard and refused to do as he was asked. Michael Fay was then called to come and help Jan. Beau kicked Jan in the leg as we took him out of the room. He was taken to the office.

(Errors in the original.)

1. On 7 November 2012, Mr Fay decided to suspend Beau for 16 days because of his behaviour, including kicking, scratching, spitting at and attempting to bite staff members and throwing property.
2. On 9 November 2012, a meeting was held between Ms Schloss, Ms Cooper and Peter and Julie Connor to discuss Beau’s behaviour and gather information concerning his medical history and background information. Ms Schloss prepared a report on the same day. Ms Schloss noted that both parents had said that he had tantrums which could last from 5 minutes to 3½ hours at home, consisting of violent and destructive behaviours. They said that the tantrums were becoming more intense, more frequent and longer in duration. Sometimes Beau was given “time out” when naughty and told to stay in his room, but would jump out of the window. Ms Schloss recommended that Beau attend a further paediatric appointment to review his medication and that his parents investigate a parenting program.

### 2013

1. Beau commenced Grade 2 in January 2013. His teacher was Ms Tanya Jensen.
2. Over a period of about six to ten weeks, Ms Jensen developed a Learning Support Plan to modify her teaching for different students in her class. For Beau, this included modification of teaching methods and the curriculum.
3. On 29 January 2013, Ms Sandra Hinton, a relief teacher, recorded the following entry in the OneSchool records:

Four supply teachers were in the classroom next door as the teacher was unable to attend due to floods. Numerous times the male teacher had to take Beau Connor outside due to harrassment, aggressive behaviour, disruptions and defiant behaviour. Once I (Ms Hinton), tried to intervene to assist and Beau tried to break my fingers, spit on me, bite me and kick my shins. When I got out of the way, he started throwing things around (number board - breaking the numbers, books and any objects in his way). We just tried to contain him until help arrived. Two able adults had to physically hold him (kicking and screaming) away.

(Errors in the original.)

1. The School consisted of a mainstream school and a Special Education Unit. Ms Meika English was the Head of Special Education Services (**HOSES**) at the School. Ms English, together with a teacher aide, Ms Tammy Stevens, were involved in an incident with Beau on 30 January 2013. Ms English’s entry in the OneSchool records was as follows:

I saw Beau hiding in the bushes outside of his classroom. A relief teacher told me he was monitoring him but he was being difficult and refusing to follow directions and come into the classroom so he was being monitored. I went into another class to see another student and as I came out I saw Beau come into the wet area of the building. He threw a stick at the relief teacher and then went and opened a cupboard and started pulling things out of the cupboard and destroying them or throwing them. As no one else seemed to know what to do I went to him and clearly told him that this behaviour was not acceptable. He then began to kick me. I told him this was unacceptable and that it was best if we left here and went for a walk. He refused and tried to get back into the cupboard. A theacher aide Tammy Stevenson who knows him a little from out of school tried to lead him away from the building but he tried kicking and biting her. to help keep the peace and allow teachers and parents to start the day Tammy and I carried Beau to the SEP. He continued to try to bite, kick, hit, scratch and resist us. At the SEP he was put into the withdrawal room. We tried to leave him there with no attention but he climbed the door and a small box and tried to damage server equipment located high in the room. He was then restrained until he said he would behave (approximately 20min) He said he would be good and we ceased the restraint and offered him fluids but he refused to engage so we left him in the room to rest and deescalate. He rested for a short while (maybe 5 min) and then tried damaging the room again. He was again restrained for about 5-10 min and said he would behave. He was again offered a drink and he refused to to take it or talk and he was left alone. He rested for about 5 minutes and then realised there were other people watching him (Lisa Cooper and Jan Schloss) and escalated again. He was restrained for another 2 minutes and settled and was left alone. On talking with Jan and Lisa we decided I would go in with a mat and suggest that when he was ready to go back to class that he sit on the mat and I would return to him to class. There was no response to my suggestion but a few minutes later he sat on the mat. I put on his shoes and returned him to class. He did not want to hold my hand but he was told clearly he would hold my hand or we would return to the room. It was explained to him and the class teacher that if he should decide to not follow the rules or misbehave in any way he would be returned to me and the room, He has not returned to the SEP today. After the event I meet with Lisa Cooper, Jan Schloss, Jan Pitt and Micael Fay to discuss how we would deal with future incidences. it was determined that he would continue to come down here and be put in the withdrawal room until such time as he indicated that he wanted to go back to class. He would then be returned to class. If he needed restraining there were to be two people involved in the restraint as he was very aggressive. He would be returned throughout the day if he became non-compliant.

(Errors in the original.)

1. Ms Stevens recorded in the OneSchool record that on 30 January 2013, she had the following conversation with Julie Connor:

Julie Connor - Beaus Mum, approached me after school on my way back to SEP. Regarding Beaus behaviour that morning. She asked if he calmed down and I said that he had and went back to class and I had not seen him the rest of the day. She said that she knew he was playing up and had asked for either myself or Sarah Koleher to help with him. I asked if she saw us take him to SEP and she said “yes, I said to Peter, poor Tammy, I hope he doesn’t bite her”. I told her that he didnt. She then proceeded to tell me about his OT and peadeatrician appointments and how she has been trying to get him diagnosed with something. She said he had a good morning until Mrs Jensen wasnt there and he hates change and it set him off. That he had worked out “the system” and knew if he played up he would be sent home, She said she was glad that we didnt and that we did what we did. She also said that she was happy if we restrained him, but would rather someone like SEP staff do it because they knew what they were doing and a normal teacher may hurt themselves trying to pick him up. I just stayed positive, let her do most of the talking and just confirmed that we had taken him to SEP to calm down.

(Errors in the original).

1. On 30 January 2013, Ms Cooper, Ms Schloss, Mr Fay, Ms Pitt and Ms English met to discuss management of Beau’s behaviours following the incident that had occurred that day. Mr Fay indicated that he was not prepared to allow students and staff to be put at risk. A plan was developed that if Beau continued to display non-compliant destructive behaviours, he would be “withdrawn” to the Special Education Unit to let him settle. If he calmed down he would be allowed to return to class, but if he did not, he would be sent home. At the same time, Beau would be provided with positive reinforcement when he was making good choices in class. The aim was to keep Beau engaged in learning.
2. On the same date, Ms Schloss discussed the plan with Peter and Julie Connor. It was her understanding that they were aware that Beau was to be taken to the Withdrawal Room. Ms Schloss deposes, and I accept, that Julie Connor never appeared to be alarmed or distressed when Beau was in the Withdrawal Room and understood that it was a safe space for him to be withdrawn to, as well as being safe for everybody else.
3. Ms English recorded the following incident on 31 January 2013:

Lisa Cooper had prearranged for Beau to be dropped at the SEP prior to school to head off any issues at the clas. I said hello to his parents and then to Beau who promptly stepped forward and kicked me in the shins. I said this was not acceptable behaviour and he tried again. I asked his parents to go and picked him up to bring him into the SEP withdrawal room. Tammy Stevens joined me. We initially put him in the room but he tried to climb up the server and we had to restrain him for approx 2-3 minutes. He then asked to be let go but promptly tried to kick me in the face so he was restrained again for about 1 minute. He then cried until he vomitted. I cleaned the vomit with no interaction with him and told him that if he wanted to talk to us or go back to class he needed to sit on the mat. He cried for approximately 20 minutes vomitting small amounts twice more, after he had put his fingers down his throat to make himself vomit. He then sat on the mat and asked to go to class. He was reminded that if he did not follow the rules he would be returned to the SEP room.

(Errors in the original).

1. On 6 February 2013, there was a further incident. Ms English’s notes of the incident were as follows:

I was called from an admin meeting to attend to Beau in the classroom. Matt Bulger, Deputy Principal came with me to assist. On arrival to the class Beau was sitting in the wet area and destroying items in a basket beside the door to the class. I asked him if he would like to return to class or come with me and he responded by continuuing to destroy the contents of the basket. I repeated I was taking him to the SEP. DP and I picked him and carried him to the SEP. During this time Beau tried to kick, hit, bite and scratch both myself and the DP. On arrival to the SEP he was put into the withdrawal room and told he need to sit on the mat if he wanted to go back to class. We then left the room. Beau then climbed the door, tried to open the door, climbed onto the louvres and we agreed he was putting himself at risk and we restrained him again. Tammy Stevens, teacher aide joined us at this point as Beau was continually kicking, scratching, and trying to bite. This continued for approximately 40 min with him being restrained for 5-10 minutes being let go and then he would start behaviours that put him at risk and we would restrain again. He then sat against the wall indicating he wanted to class and I went in to put on his shoes and socks but he started peeling off the black skirting on the wall. I asked him to stop or I would leave the room until he had stopped. He continued so I left the room. He continued to pull off the black skirting material and then he pulled off the door stopper and showed me he had a screw. I spoke to DP and we agreed to go in to get the screw and that he would take the top and I would take the bottom. As we went into the room Beau lunged for the DP trying to stab him in the leg with the screw. We managed to get the screw from him without anyone being injured. He was restrained for a short time and let go as he did not struggle. At one time he did a small vomit and said his chest hurt, so we cleaned up the small amount of vomit, about a 4cm circle, and left him but he shortly got up and climbed the window again. We left the room, he climbed putting himself at risk and we would go in restrain and he would not fight. We would leave. After a couple of episodes it was determined he was playing a game so we thought we would try taking him back to class. He was not cooperative with putting his shoes on or going to class but we were hopeful he would he might settle when we got to class. Mrs Jenson came out to talk to him but he was not responsive and tried to kick her. At this point we had been restraining him for at least an hour at intermittent intervals, so we decided to take him to the office to discuss the next step. It was determined we would phone the parents. While waiting for the parents he continued to need restraint. Whenever we thought he was calm enough to let go he would start to hit or kick out at staff. In total Beau needed to be intermittently restrained for approx 2 hours.

(Errors in the original.)

1. On 8 February 2013, Mr Fay decided to suspend Beau for 20 days for behaviours including kicking, scratching, spitting at and attempting to bite staff members, attempting to stab a Deputy Principal with a screw, damaging property and throwing objects. Ms Pitt also participated in the making of the decision. On 15 February 2013, Julie Connor appealed against the suspension. She was assisted by Ms Schloss to prepare a submission. In her submission, she noted that:

Staff have restrained Beau, and he feels threatened when he is restrained and responds by lashing out. I explained this to the school but they continue to restrain him.

1. The submission continued:

Beau knows that if he has a meltdown, he will go to the Principal’s office and then get to go home on suspension. He is winning each time and he gets what he wants. He has worked out the system, and suspensions are not changing his behaviour. I have suggested in-school suspensions so Beau doesn’t miss out on doing work and the routine of coming to school. However the school have rejected this idea and stated that they don’t have the resources for this option, but suggested that I home school Beau. I refuse to do this because Beau needs the social aspect of schooling.

1. In the School’s response, it was indicated that restraining Beau was certainly not the preferred option of School staff and was only ever used as a last resort. Further, restraint was only used when other students, staff or Beau himself were at risk. The response said that Beau’s non-compliance and disruptive and unsafe behaviour significantly affected the learning of his peers. It also stated that, not only did the School not have the resources for in-school suspensions, but that they would not recognise the seriousness of Beau’s behaviour. The suspension was affirmed by the Regional Director of the North Coast region.
2. Ms Cooper and Ms Schloss implemented a Class Behaviour Management Plan dated 27 February 2013. That document indicated that the goals of the Plan were for Beau to engage in learning in a compliant manner, to interact appropriately with peers and adults and to communicate how he was feeling and seek assistance when required. The “classroom expectations” included appropriate social interactions, respect for other people’s property and following a teacher’s instructions at all times. Appropriate behaviours would be rewarded with praise and positive reinforcement, informing his parents of the positive behaviours and rewards and awards. The plan for dealing with inappropriate behaviour which was safe and manageable included redirection, ignoring minor incidents and using visual prompts and cues to allow Beau to communicate feelings. The “crisis plan” was stated as follows:

Give warning of choices if behaviour escalates.

Contact HOSES in SEP for assistance.

Remove Beau from classroom to SEP calm down room.

Withdraw attention (verbal & non-verbal).

Maintain safety of all stakeholders.

State that when calm, and ready to listen, Beau is to sit on the carpet mat in the calm down area.

When calm, restore relationship & escort back to class.

In extreme situations, if Beau does not settle after 40 minutes, parents are to be contacted to come and remove Beau from school.

1. On 28 February 2013, Dr Holloway diagnosed Beau as having Atypical Autism Pervasive Development Disorder. On the same day, the School completed a form to allow verification of Beau for eligibility for the Special Education Program. This would allow the resources of the Special Education Unit at the School to be engaged for Beau. On 12 July 2013, the Department of Education made a decision that Beau met the requirements for verification. That allowed funding to be allocated for support by the Special Education Program.
2. Ms Cooper recorded the following incident on 18 March 2013:

Beau’s mother Julie brought him down to GO’s office at 8.50am and reported that Beau had kicked one of the teachers up at the Year 2 block. GO suggested Beau come in for his planned sand tray session. Beau clung on to his mother and would not let her go. Julie stated that she wanted to go to assembly to see [name redacted] get an award. GO assisted Julie to leave and encouraged Beau to play in the sand with the miniatures. GO took out the horse and foal miniatures as Beau loves horses. Beau threw one of the miniatures across the room, and proceeded to tip the table over and tried to push the sand box onto the floor. Lisa Cooper entered the room and removed the sand box, and then assisted GO to keep Beau inside the room. He was trying to get out through the door and then opened a large sliding window and tried to climb out. GO gave Beau 3 options -1 was to go to class, the other was to play in the sand with the miniatures or thirdly go to the withdrawal room in the SEP. Beau’s defiant behaviours continued and he began to grab at the cleaner’s broom and the fire hydrant hanging on the wall in GO’s office. Lisa Cooper and GO escorted Beau over to the SEP withdrawal room for time out. In the withdrawal room, Beau climbed up onto the loovers and began to jump on them – he broke one loover and was about to jump on another one so HOSES and GO intervened. Beau tried to get out through the door and tried to climb up onto the loovers at various times. He then sat still and faced the corner and scratched the paint off the door hinge. GO and HOSES removed themselves from the room and reminded Beau of the expectation that he stays away from the loovers and when he was ready to go back to class, he was to sit on the line. Beau then ripped at the rubber lining on the wall of the withdrawal room, and started to climb up onto the loovers again. When HOSES & GO intervened, Beau began to kick out at HOSES and attempted to punch HOSES. Beau also kicked the power outlet and then he began to pull the cover off the power outlet. GO and HOSES then escorted Beau to the office as he had been in the withdrawal room for 40 minutes and his behaviours were escalating.

(Errors in the original.)

1. In that report, “GO” appears to refer to the Guidance Officer, Ms Schloss, while “HOSES” refers to Ms English.
2. On 18 March 2013, a referral form for Intensive Behaviour Support was completed. The form noted that the referral criteria for Intensive Behaviour Support included factors such as the student being at risk of repeated long-term suspension or exclusion and behaviours causing significant disruption to the learning environment. The behaviours of concern noted for Beau were:

Beau’s refusal to participate in the classroom program and his associated behaviours which impact on the safety of students and staff members—throwing items around the room indiscriminately, scribbling on the work of others, upending furniture. When removed from the classroom environment by staff members, Beau kicks, hits, scratches, punches and bites. When placed in the withdrawal room Beau destroys equipment/fixtures.

1. The anticipated outcomes from the referral were described as:

Beau’s engagement in classroom tasks and learning. Ability to calm when given the opportunity so behaviour does not escalate to the degree where it impacts on the safety of students, staff and Beau.

1. From 15 April 2013 to 19 July 2013, Beau entered a “Flexible Arrangement” which involved him attending the School from 9 am to 12 pm.
2. On 22 March 2013, Ms Jensen recorded the following incident:

Beau settled well today. He did the first rotation and then refused to do any others. He sat on his chair attempted to push his desk over a parent helper moved his desk away. He then pushed all of the art activity sheets of his desk on the floor and kicked them until i moved him away from his desk and sat him on his chair by himself. he shut down and would not talk to me when I was trying to encouraging him to join his group (ipad). Then he kept saying he wants to go home. I told him we want him to stay until mum picks him up at 11 am. i then went back to my guided reading group and observed him pulling box of the desk and a book. [Name redacted] then tried to put them back on the shelf and he pulled them back off. A parent helper moved them out of the way. I then spoke with him again encouraged him to go to his next group. He refused and then threw a box of pens on the floor. I then asked the Teacher aide to work with him. He refused. He then sat in the door way with his chair hitting the door with his foot. I ignored this until it got to loud and was disturbing our rotations and stopping me from doing guided reading. i had worked with him for an hour trying to get him back on track. I rang Ms ENglish and she arrived quickly with other DP. Thank you

(Errors in the original.)

1. On 1 August 2013, an Education Adjustment Program was set up to support Beau. Adjustments were made to the curriculum and assessment procedures and the level and type of support and material to be available to Beau. This included:

(a) targeted learning activities delivered individually or within a small group, delivered on about a daily basis;

(b) support using additional personnel and/or material to facilitate participation in learning activities, delivered on about a daily basis; and

(c) intensive assistance from support personnel is required on about a daily basis.

1. On 2 August 2013 the following incident was recorded by Ms Karen Flannery:

Beau came to class after first break obviously stressed and anxious. He refused to join in class activity. Class teacher used tactical ignoring, verbal redirection and removing things that he was destryoying eg class books, scissors etc. Class teacher reminded him of calm down strategies and suggested he draw a picture but he continued to scribble on desk with glue, sunscreen, text and pencils. He started to push his chair around which is one of his normal ways he appear to distress but this time started to push it into another student. Class teacher removed chair and Beau laid on his desk hiding face and started to push his desk around class. Class teacher did try to comfort Beau a number of times and ask what had upset him. He was unable to communicate. Whilst class listening to story on mat, Beau pushed desk into class teacher who held it there away from other students. At this stage, Class teacher had already sent note to office with a student to ring parent to come and pick up. Beau continued to attempt to push over desks and tables but not with intention to do damage but to get some attention. Class teacher has worked with PDD students before and realised that he was unable to express or verbalise what was wrong and this was his way of trying to express his feelings. Whend SEP staff arrived Beau was up on table in curled up position and staff waited with him for mum to arrive. Mum found out that he was upset by some boys at First break and took him home. No one was injured and it was apparent to class teacher that Beau was not intending to do any harm to anyone although there was a possibility of unintentional harm could of happened.

(Errors in the original.)

1. On 19 November 2013, the following incident was recorded by Ms Jakki Bird:

Upset by teacher reprimanding him before school. Noncompliant in class. Noncompliant in SEP. Walked out of SEP class disrupted brothers class. Mother contacted and she picked him up at morning tea.

### 2014

1. In January 2014, Beau commenced Grade 3 at the School. His teacher was Ms Rachael Brookes. Beau was also supported by Ms Kylie McCloskey, a teacher from the Special Education Program.
2. Ms Brookes made adjustments within the classroom for Beau, including a play tent he could retreat to. She documented a number of behaviour strategies she used with Beau.
3. On 5 February 2014, there was an incident recorded by Ms Brookes on the OneSchool records as follows:

Beau displayed off task, disruptive behaviours throughout the day. He has been doing this sort of behaviour since the school term has begun. He started today with refusal to sit in his chair. I directed him to it and then took him by the hand and lead him there. He momentarily sat and then began to wander aimlessly around the classroom. He then went to the back of the room and sat on top of a table. He was redirected to sit on his chair at his desk. He complied and completed about 10mins of seated on task work. When the activity changed he stood up and moved to his tent. He stayed in there momentarily and them again wandered around the classroom. I redirected, ignored and acknowledge appropriate behaviours of others. He ignored all of these requests. I them moved him back to his desk. I gave him a timer and asked him to complete another 5mins of class work. He began to press the buttons to make it sound. I asked him to stop which he did eventually. He then got up and sat on his table. I directed him to get down. Beau then walked to the back of the room and began to climb a free standing billboard, I asked him to get down he didn’t so I removed him. He hung on tightly. I placed him back in his tent thinking he needed time out. He stayed in it for a short time and then began pushing it around the room whilst he was inside. I recognised that he was attention seeking and I ignored his behaviour for a while. He stopped and then took himself outside and began climbing on up onto the stair railings. I asked him to get down. He refused and after asking him several times I then removed him. He continued to try and climb and when he couldn’t he ran inside and climbed out of the window. He then ran around the building and sat under the stairs. I knew he was there so I ignored him. When I didn’t come out he ran down the path. A parent helper took it upon herself to go and retrieve him. She stated he was on his way out of the gate. He came inside and went into his tent. I ignored him and continued teaching He then walked out side when I was unaware and went back under the stairs. I tried to coach him out but he refused. I went inside to call for help and he ran down the path and away from the classroom. Matt Bulger DP and Mieka English Head of SEP found him on the oval where he had climbed a tree and was refusing to come down. Mieka then asked me at M.T to help get him down from the tree. I told him that we would go see the groundsmen to organise Beau to help him for a while. Beau came down from the tree after about 5minutes. We began walking across the oval and Beau was holding my hand coming compliantly. I was then instructed by Mieka to leave and she and Matt continued to walk across the oval with Beau. Beau began refusing to walk. I left and upon going to the office for some non contact time I was told that Beau was sharpening pencils in Matt’s office. Barb Christie D.P rang and discussed Beau’s morning with his mother. I took Beau back to the classroom. I was unable to organise the groundsman at this time. Beau pointed him out and when I told him that I would have to organise that later he seemed unhappy and began to become disruptive again. Beau went back outside and began climbing the railings again. I asked him go hop down and he refused. As he was being unsafe I removed him. He then began holding onto the side of the railing tightly. Kylie McCloskey who was doing my non contact time for me began helping me to try and get him to let the rail go. We worked together with both of us telling Beau he was being unsafe. We told him that he needed to make the choice of returning to the classroom to do the right thing or go to the SEP classroom. He refused to make the choice himself so I walked him into the classroom and placed him into the tent. He spent the rest of the session playing with construction activities inside it. After lunch Beau lined up with the class but sat on the seat instead of the ground with the other students. I asked him to sit down on the ground, he refused to move so I moved him to the line. He walked to the classroom with the class and as all the other children were reading he began to continue with his inappropriate behaviour. He ran back outside and refused to come out from under the classroom building. As the behaviour had been ongoing for most of the day I told him that if he didn’t come out in two minutes I was calling SEP and he would be taken from the room. I set the timer and I noticed he came to the door. When I went to the door he went back under the stairs. I went to the phone to call. Whilst I was doing this Beau came out and began banging the door repeatedly. He then ran off down the pathway toward the year 7 eating area. I was then told by. Teacher aide from another room that he was swinging from the walkway roof. Mieka sent help from SEP. He was then returned to the classroom after some time where he continued to wander around the room and then play with some construction toys. He packed up by the time the bell rang and left when the bell rang. When his mother arrived he ignored her and wouldn’t speak to her. When he did he yelled at her and then climbed the stair railing again. She spoke very sternly to him before he got down and then they left.

(Errors in the original.)

1. On 10 February 2014, Beau was referred to Ms Cooper again for behaviour support.A meeting was held on 18 February 2014 with Ms English, Ms Christie, Ms Cooper and Mr Paul Handley, the Guidance Officer—Intensive Behaviour Support, to discuss management strategies and what extra support was needed. It was recommended Beau be enrolled at the Hervey Bay “Positive Learning Centre”.
2. On 11 February 2014 another behavioural incident was recorded by Ms Brookes, following which Beau was suspended for two days. On the same day, Ms Brookes recorded the following discussion with Julie Connor:

Beau can to the classroom this afternoon and said his mum wanted to speak to me. We spoke of how she was upset about his behaviour and that she had spoken to him and conveyed this. We discussed that he wasn’t happy his father had gone back to work. Juloie also told me that as she was a victim of crime that he had a special password “muffin” if he didn’t know that person collecting him. She discussed openly in front of both children the details around her accident and how Beau’s Grandfather had been the one to cause the harm. She also told me that she had been informed that there may be a woman looking for her and the children and that is why the password had been organised. I told her to speak with Barb Christie our D.P to let her know of the concerns she had. I organised some work for him to complete whilst on suspension.

(Errors in the original.)

1. On 14 February 2014, Beau was referred to the Bay Safety Mates Program as another support mechanism. The referral form indicates that Julie Connor gave permission for Beau to participate in the following programs: bullying and managing anger, safety strategies, friendships/healthy relationships, emotional intelligence, effective communication and self-esteem programs.
2. On 19 February 2014, Ms English recorded the following incident:

I was asked to come to the library to assist Mr Bulger as Beau had been making poor choices in his Bay Safety Mates session. Mr Bulger had given Beau clear directions and choices and Beau had refused to respond. When I arrived I explained to Beau that he could walk with me to class or we would take his arms and walk him to the SEP withdrawal room. I gave him to the slow count of 5 to indicate his decision. He chose to climb on the table which indicated to me we would be walking him to the SEP withdrawal. Mr Bulger and I each took an arm and walked him out of the library. Once Beau was out of sight of his peers he stopped walking and began to drag his feet making it difficult to walk him. Mr Bulger and I ended up lifting his legs as well in order to prevent injury to any party. Beau was placed into the SEP withdrawal room at 1255. At this time he climbed up the walls onto the upper window where he sat trying to remove the slats of the windows, banging on the ceiling. At 1305 he was holding the door handle to climb up the door and try to open the door. he was also lying on the floor trying to undo the bolt to open the door. At 1310 He climbed back up into the corner of the room where the window was and put the mattress and the pillow through the slats of the window to the outside. At 1320 He was swearing at persons unknown, I checked but could see no people, saying fucking shut up, hey you fucking idiot, what the fuck dickhead, hey dickhead. This continued for 10 minutes. At 1330 he stood against the window giving me the finger, then through the door window. At 1350 he was sitting in the corner and I asked him if he was ready to go to class, he said yes. He put on his shoes and socks and he picked the items he had put outside and returned them to the withdrawal room. I then took him back to class.

(Errors in the original.)

1. On 19 February 2014, Beau was referred to the Hervey Bay Positive Learning Centre (**PLC**), which seems to have been conducted at a different school. Ms Jensen had been transferred to the PLC by then. In early 2014 Beau attended the PLC two days a week, while attending the School on the other three days. Ms Jensen’s recollection is that his behaviour at the PLC was much better than at the School because there was individualised learning, as well as “life skills” taught in the afternoons. It appears that Beau’s placement at the PLC ended when the program was discontinued due to lack of funding.
2. On 28 February 2014, Ms Brookes made the following entry in the OneSchool records:

Beau came to school in a mood of some sort and as soon as he saw that the seating arrangements had changed he moved his desk and another students to outside of the group. He was asked to put them back which he didn’t comply with so I did it. He went to gross motor skills with SEP but was strongly encouraged by his mother before he would go. He then came back to class and was supported by and aide for half an hour. He worked well and earned a reward which he had selected. He had chosen fiddle toys. I gave them to him and he told me that he didn’t want them and that you couldn’t use these outside. I told him he could select a different reward next time but this was his choice for now. He stayed seated for a while and then wandered around the room. I seated him and then spent the next 15mins redirecting his behaviour as he was yelling out so other could not hear the teaching and instruction. After 15 mins I escorted him outside and rang SEP to come and collect him. He spent some time refusing to go and tying the door from the outside with string. He was then taken to SEP and he spent time in the time out room. He was verbal and unhappy for 45mins and then he lay down and went to sleep. Julie his mother who was to come at 12.30pm to assist in the classroom was called and asked to come in earlier. When she arrived he was still asleep so she took him home.

(Errors in the original.)

1. Ms Cooper attended Beau’s classroom on 2 March 2014 to observe him. She prepared a report in which she recommended strategies to Ms Brookes including visual supports, using velcro dots for sensory focus and connecting in a “special way”.
2. On 13 June 2014, Ms Brookes recorded the following incident:

Beau spent the morning distracting students and being non-compliant. He continually disrupted the teaching by calling out, making noises, crawling under the tables, intentionally bumping students, pushing their work off the desk and trying to draw on their belongings until it was impossible to keep the focus of the other students. He was given redirections and clarification of expectation however the silly behaviour continued. It was very attention seeking and after many warnings he was given timeout. I contacted the admin and Barbara Harch (D.P) came to the room., He refused to leave with her however he did work quietly whilst she was watching him. When she left he began the same types of behaviour again. I redirected, warned and gave timeouts as per the behaviour plan and then called the office again. I spoke to Simon Boss-Walker and requested he be removed from the room. Meika English and Barbara Harch took him to S.E.P where I am told he was non-compliant. It was decided to ring his mother to take him home. Upon hearing this Beau walked himself back to the classroom. He was followed by Jay Worth who supervised him to complete a task. he needed a countdown and specific directions to get him to begin the task from myself. We left to go to the library and he walked compliantly there and selected a book. his mother arrived and I suggested she take him home as planned by SEP. She said he was going to his room for the day. We discussed the reasons for the behaviour and could not find on except that he was trying it on to see if I would send him to SEP which I did. I told mum that I was reluctant to send him home however since she had been called and he had been very distracting this morning she should take him. Beau apologised to me of his own accord and I asked him to come back to school next week showing better manners. he was able to identify why he was sent out of the room to SEP this morning.

(Errors in the original.)

1. The School developed Individual Behaviour Support Plans for Beau dated 6 February 2014 and 29 April 2014. They were developed by Ms English in consultation with Beau’s classroom teachers and other staff.
2. The Individual Behaviour Support Plan dated 29 April 2014 listed Beau’s behaviours of concern as including refusing to work, dangerous behaviours in the classroom, leaving the classroom and School grounds and refusal to follow directions. The triggers were noted to be hard to define, but included writing, events at home, being touched, authority figures (especially women), lack of food, wanting to be at home and work avoidance. A hypothesis was stated that Beau engages in behaviour aimed at meeting his needs, such as work avoidance or time at home.
3. The Individual Behaviour Support Plan listed a number of “Proactive Strategies” under the headings Physical Environment, Program Environment, Interpersonal Environment, Communication Skills, Social Skills, Organisational Skills and Reinforcements. Many of these strategies were noted to be current or ongoing. More specifically, the Proactive Strategies included planning for Beau to take part in a gardening program, modification of subjects, Beau’s mother attending class for an hour a day, using a timer, being invited to gross motor/social skills classes at the SEP, relationship building, positive reinforcement and rewards such as access to timber model constructions, time on the computer, earning points towards a treasure box prize and play money.
4. The Individual Behaviour Support Plan also included “Reactive Strategies”, listed under the headings Redirection/Prompt, Escalated Behaviour Plan (for minor/moderate behaviours), Restitution Plan (when calm) and Possible Consequences (natural where possible). The Escalated Behaviour Plan was described as follows:

**Escalated Behaviour Plan (for minor/moderate behaviours}**

When Rachael has used her repertoire of ESCM strategies and Beau is still escalating then SEP are staff are called to work with Beau - Narelle Green or Kylie McCloskey. They initially try to talk Beau down and return him to class. If unsuccessful, then they relieve Rachael who tries to talk him back into class. Each person works with him for 10-15 min before changing to the other. If he is not back in the class after 30 min then the HOSES or Deputy will be called to assist. At this time Beau is given the option of returning to class or going to the withdrawal room. Beau will stay in the withdrawal room until he is calm enough to go to class. This is indicated by Beau sitting quietly against the wall and following teacher directions. Beau will be monitored by staff in the middle SEP. If he has, displayed aggressive or high risk behaviour than he may be suspended. The limit for the withdrawal is 30 minutes then Mum will be called to collect him and he may be suspended for his behaviours of disrupting the class, dangerous behaviours, non-compliance with directions.

(Errors in the original. Underlining added).

1. The Possible Consequences listed in the Individual Behaviour Support Plan were quiet time, loss of playtime, detentions, suspensions and Withdrawal Room.
2. The Individual Behaviour Support Plan of 29 April 2014 was signed by Ms Brookes, Ms English and Julie Connor.
3. The copy of the Individual Behaviour Support Plan dated 6 February 2014 in evidence is unsigned. It was similar to the one dated 29 April 2014, but with some minor differences in the strategies. The Escalated Behaviour Plan was the same. Ms English states that the School probably has a signed copy of that Plan but that it cannot be located.
4. On 16 October 2014, Ms Brookes recorded the following incident:

Beau had been fairly disruptive in class today and as it neared big lunch his behaviour escalated and he spent much of the lesson repeating me, shouting out and disrupting others by flicking things, cutting his book pages and being loud. I had asked him to stop and redirected him, removed him from the situation and placed him in time-out and given him close talks. He continued the behaviours so I told him to wait back as I dismissed the class to lunch when the bell rang. He ignored me and ran out of the classroom to the yr 3 eating area. I went to where he was and he began to run away from me hoping I would give chase. I walked away and then returned about 5 minutes later. He saw me and tried to run again at this point I was able to hold his hand and began discussing his behaviour. he refused to listen to me so I suggested that as he had been considerably disruptive in class and he was refusing to listen to me now that he would need to go to Mrs Christie for a chat. He began pulling away from me as I lead him to the office. He was very irritated by this point and Mr Brennan saw I was struggling with him so offered assistance. Beau tried to hit and kick Mr Brennan and he made contact at one point with his shin. I left to get some more support and when I returned Beau had been placed on the seat in the office and was being spoken to. He then hopped up and ran away hiding in the bushes at the front of the office. I spoke quietly to him and asked him to make the right choice. I told him I would be inside and I expected that by the count of 5 he would have come inside and sat near Mrs Christie’s door. I then went inside. Beau entered the building and sat in front of Mr Boss-Walker’s doorway. At this point the bell rang and I left to attend the rest of the class. Mrs Christie gave him some time out in her room and them returned Beau to the classroom. He behaviour was more settled but he continued to distract others for the rest of the afternoon. When his mother came I told her about the incident and she said she would speak to him.

(Errors in the original.)

### 2015

1. In January 2015, Beau commenced Grade 4. His teacher was Ms Lorna Clarry.
2. Ms Clarry made adjustments for Beau including rearranging the program so that difficult subjects were only taught when a teacher aide was present for one-on-one learning, targeted learning activities and modified assessment.
3. Beau would attend his mainstream class in the morning for roll call and a short activity before being collected to go to the SEP. He would spend the morning in the SEP and return to class just before the lunch break, around 1 pm. He would remain in the class for the afternoon session.
4. On 28 January 2015, Ms Clarry recorded the following discussion she had with Julie Connor:

Spoke to Julie about Beau leaving the room after being asked what was the problem in the playground. He moved out of the room without permission. I spoke to Julie about how I would like to extend his time in the sep as it would be very beneficial for his academic progre.ss I also mentioned that I have concerns for his safety as I do not have a withdrawal room. She agreed band was supportive of this.

(Errors in the original.)

1. There was a further Individual Behaviour Support Plan dated 13 February 2015 which included changes to the Proactive Strategies and Reactive Strategies. The Proactive Strategies included that Beau had been offered to work in the garden program, he was attending the SEP for morning sessions, including for social skills lessons, and was seated with students he liked. He was required to complete a certain amount of classwork and could then assist the teacher with chores. Julie Connor was said to be available to collect Beau if he was not responding. The Reinforcements included positive input from staff, rewards from the treasure box and time on the computer. The Escalated Behaviour Plan was as follows:

**Escalated Behaviour Plan (for minor/moderate behaviours)**

* If behaviour escalates call SEP staff or office to manage Beau
* Give Beau choices — Beau I need you need to leave the classroom now or I will need to take your arm to escort you from the room
* Beau is placed in the withdrawal room if aggressive
* Beau is ready to come out of the withdrawal room when he sits quietly against the wall or on the mat
* Beau will be monitored by SEP staff when in the room
* If Beau has not calmed after 40 minutes then call Julie Connor to come and collect him
* If Beau has displayed aggressive or high risk behaviour, if he has continually disrupted the class or been continually non-compliant than he may be suspended

(Errors in the original. Underlining added.)

1. The Individual Behaviour Support Plan of 13 February 2015 was signed by Ms Clarry, Ms English and Julie Connor. The signing date was stated as 28 March 2011, but that was clearly a mistake.
2. On 23 February 2015, Mr Bulger recorded the following incident:

Placed in withdrawl room by Narelle and Deb as he was moving around the room, trying to jump out window and threatened [name redacted]. Beau was hitting and kicking walls in the withdrawal room. He was told a number of times to sit on the mat when he was ready to talk. Eventually he said he was ready to talk. He agreed to go back to class. I informed him that he would have detention with me at 2nd break, he said he would not do that. I informed him that he would get 2 days in the detention room if he didn’t attend. I said if he missed detention then he would be suspended. He said he didn’t care. He walked out of the SEP and went to his classroom (sat under a building for a short time), climbing through railings and kicking the teachers desk in the room. He also kicked and pushed desks in the room. His class was not there. He refused to follow DP instructions. We found out that his class was in the computer room so we went there. When his class returned to the classroom, Beau was standing in the doorway between 4K and 4A. DP asked him to close the door however he refused. He ran through 4A and went outside. He found a hula hoop outside and refused to follow instructions. He eventually returned to his classroom, refusing to give the hoop to DP. He was moving around his classroom disrupting other students. I informed him he would need to come to the office or SEP with me. He refused. I informed him we would contact his mother to pick him up. He started to join in with group work for reading groups. Beau remained in class for the remainder of the session and went to the office at 2nd break as requested. Julie picked Beau up and spoke with DP and class teacher (Mrs Green).

(Errors in the original.)

1. Ms Narelle Green, an SEP teacher, recorded the following incident on 24 February 2015:

Beau came into the SEP and as soon as he was asked to do some work decided to leave to go to his mainstream class. I told him he would have to do his SEP work at lunch time if he left. I asked Deb to go and let his class teacher know that he was leaving without permission. Beau did not turn up for his lunch time detention to complete his work again today.

(Errors in the original.)

1. On 25 February 2015, Ms Green recorded the following incident:

Beau refused to do any work. When he came in he was unhappy to be in the SEP but remained calm until he was asked to do some work. Beau immediately refused to do any work (quite reading) and begain running around the room, calling [name redacted] to join him and encouraging [name redacted] to do so by offering to be his friend. [Name redacted] and Beau then climbed on furniture, got under desks, went into the staff only area, hid under the staff computers, tried to lock them selves in the staff kitchen, tried to lock them selves into the timeout room together. Tried to climb out of the top windows, knocked things off students desks and ran around the class room. Through this Beau was saying come on [name redacted], come in here. To prevent the boys feeding off each other they were separated by placing Beau in the withdrawal room and DP was called.

(Errors in the original.)

1. On the same date, Ms Green recorded the following further incident:

After being in the withdrawl room Beau was re-entered into our room. Beau refused to do his work, he constantly tried to leave the room to gain access to [name redacted] again. He tried to push Lisa, Deb and myself out of the way several times, he moved a students desk away from him as he sat trying to write, he pulled another student’s chair out from under him, he knocked student’s work off their desks as they were working on it. He rubbed out a sudnet’s work as they were doing it (student was writing with a white board marker on a sheet) and he sat on students desks on top of their work to directly prevent them from working. Beau began inappropriately using my equipment such as the magnetic clok hands he was hitting off students desks as they tried to work, the magnetic clips he tried to take students work off them with. He would annoy students until we asked them to move away then he would run to where they were directed to move to and sit there preventing them from following the direction. He tried to wipe off the math sums I was writtingg on the board, he flicked rubber bands at all the students. Beau’s disruption lead to us evacuating the room, s disru

(Errors in the original.)

1. On 26 February 2015, Ms Green recorded the following incident:

Beau refused to follow directions and sit on the carpet when he came into SEP this morning, I used a rule reminder, // praise, wait, and ignore. Then continued on with the lesson. From here we went to do automaticity. Beau refused and left the room. Beau chose to move in and out of the room from then on. He did complete a little bit on phonics work I praised him very quietly and rewarded with 5c stamp. He then smiled and walked out again, he then refused to re-enter. I used a timer, rule reminder, ignore and occasional verbal prompts giving plenty of take up time between. He then went to PE. After morning tea Beau refused to participate in individual reading on the carpet with peers. He left the room without permission I used a reminder but he ignored this and left. Beau’s class teacher rang and asked for him to be removed from the classroom as he was disturbing their learning with misbehaviour. Deb and Robyn went to get him but he refused to come they then had to escort him out of the room and place him in the withdrawal room. Once quiet Mrs Olsen went in to talk to him and he locked her in there. Mr Bulger then came to deal with Beau. Beau was brought back into the room by Mrs English and instructed not to move out of his seat. I explained the activity to Beau 1:1 in case he missed the instructions. I did get some math work out of him for a couple of mins however, Beau left shortly after Mrs English, he hung around the outside of the classroom again. We managed to reengage him when it was time for his 1:1 reading with Mrs Gorlick. He was then asked to come down to the library with us. At the library Beau refused to follow instructions, he would not sit on the carpet, crawled under book shelves, left the area we were sitting in, went into a staff area and got a staff only chair on wheels and wheeled it around the library disrupting the rest of the class. Beau was using this by laying across it and wheeling himself along on his belly. We let him know it was not safe but he continued. When it was time to borrow a book Beau went into the area I said to stay out of he then refused to borrow a book. Beau would not line up with the class when it was time to leave he tried to run off on Mrs Olsen and then began playing with the water bubblers filling his mouth up and spitting it out. On the way back he was acting as if he was threatening to spit on other students when Mrs English came be he had swallowed the water by this time.

(Errors in the original.)

1. On 27 February 2015, Mr Boss-Walker decided to suspend Beau for three days because of behaviour consisting of failure to complete any work and consistently disrupting his class for more than half the day. That behaviour was said to have been evident and recorded 22 times in the previous 24 days.
2. On 5 March 2015, Ms Green recorded the following incident:

Beau had an issue with [name redacted] in PE. On talking to the teacher Phillipa Morgan, she said that during the run [name redacted] accussed Beau of trying shoving him up against the fence and trying to strangle him. Beau said that [name redacted] had pushed him. During the lesson Beau continued to walk after [name redacted] and would not leave him alone. [Name redacted] tried to intervene asking Beau to leave and asking [name redacted] to go away. The teacher observed that [name redacted] only wanted Beau to stop harassing [name redacted]. Then at morning tea Beau went to [name redacted] and hit him. This was witnessed by Louise Thompson. Louise restrained Beau and asked for assistance. Beau was let go and went straight to [name redacted] and started hitting him, [name redacted] went to the ground and put his hands up to shield himself. Beau was taken to the SEP by Mrs Olsen and Mrs Green and put into the withdrawal room. Beau insists that [name redacted] was hitting him in PE and [name redacted] as well.

This was witnessed by anybody.

(Errors in the original.)

1. On 6 March 2015, Mr Boss-Walker decided to suspend Beau for 5 days because he had physically assaulted another student.
2. On 16 March 2015, Ms Green recorded the following incident:

Beau refused to participate and as soon as he was asked to do automaticity he left the room. He sat outside for a bit then gradually moved towards his classroom. After 40 mins of non compliance his mother was rang but did not answer the phone. Beau was redirected to his learning throughout the 40 min period at intervals of 5 to 10 mins. He then sat outside his classroom for a while but progressed to the next classroom. We received a phone call that he was disrupting the classroom down from his mainstream class and when the teacher aides went to remove him he grabbed his lunch box and headed for the eating area as the bell was about to go. The TAs took him to Mrs English’s office but she was not there so they brought him to the SEP on the way he started to kick and punch at them so on arrival at the SEP he was placed in the withdrawal room to calm down. I phoned mum again and she answered and was asked to come and collect him.

(Errors in the original.)

1. On 17 March 2015, there was a fight between Beau and another student in the playground. Mr Bulger investigated the incident and made the following entry in the OneSchool records:

Jo Woodman observed both [name redacted] and Beau punching and grabbing each other - fighting. She interveved. Beau refused to speak with her and required Mrs Woodman to hold him so he wouldn’t run off. Mrs Woodman sent students to get Mr Bulger to assist. Mr Bulger and Mrs Christie investigated (spoke with Beau, [names redacted]).

Beau said that [name redacted] was pulling faces at him and put the rude finger up at him. Beau said that [name redacted] then tried to hit Beau so Beau started hitting [name redacted].

[Name redacted] intially (in the playground) told Mr Bulger that he hadn’t done anything wrong and that Beau was hitting him, however later (in the office) informed Mr Bulger something different. [Name redacted] informed Mr Bulger that Beau was bumping into him while he was swinging across part of the playground. [Name redacted] informed Mr Bulger that he then started kicking and hitting Beau. He informed Mr Bulger that Beau did the same back to him. Then the teacher intervened.

Mrs Christie spoke with [names redacted]. Both of these boys said they saw Beau hitting [name redacted] but didn’t see [name redacted] hitting Beau. They also informed Mrs Christie that they heard Beau swear (saying the F\*\*\* word).

Mr Bulger again checked what Mrs Woodman saw and she definately saw Beau and [name redacted] hitting and grabbing each other.

(Errors in the original.)

1. Mr Bulger also made the following record of his contact with Julie Connor on 17 March 2015:

Contacted parent to inform her of the incident and consequence. Parent unhappy about the consequence and wanted to know if the other student was in trouble. I explained that we are only able to discuss the consequences of Beau’s with her, and that I would discuss the consequences for the other student with his parents. Parent said she was going to go to the Department of Education as she felt the school had it in for her son. I requested she pick Beau up from school. I also said work would be arranged. The parent asked for that work to be sent to her daughter’s room.

1. On 18 March 2015, Mr Boss-Walker wrote saying that he had decided to suspend Beau for ten days from 18 March 2015 because he had hit and grabbed another student, had refused to answer a teacher when questioned about the incident and was not participating in the program of instruction.
2. An Individual Curriculum Plan for Semester 1, 2015 was also prepared. It described the learning areas of English and Mathematics, the level of achievement expected for each activity and the overall learning expectations and strategies. There were specified strategies to assist Beau with communication, social and organisational skills and positive reinforcements. The Plan was prepared by Ms Green, who recorded that it was, “endorsed by parents/carers on 08 May 2015 (Phone call)”.
3. Ms Clarry recorded the following incident on 27 May 2015:

When Beau entered the room he was reading quietly and as soon as we sat down to do Geograaphy he was non-compliant with routine. He started swinging a ruler about and then refused to put this down. He walked out the room and was sent to SEP as he was non-compliant. Meika was informed

(Errors in the original.)

1. On 27 May 2015, Ms Green recorded the following incident:

Beau came back from 1:1 math with Mrs Olsen and started disrupting students learning. He refused to participate in what we were doing and started hitting student’s work that was hanging up around the room, he then started walking up to the front of student’s desks hitting their tidy trays so it would move forward and hit them in the stomach. He continued to do this to each student despite our attempts to interveine. He then went back to the student that was the most upset by his actions and continued to hit his tidy tray out every time the student pushed the tidy tray back in Beau hit it back out. We were unable to stop Beau from doing this so we removed the student from their desk to another table without a tidy tray. Beau then went to hit at another student’s tidy tray and Mrs Olsen stood in his way. Beau moved along to another student’s desk and I stood in his way. Beau then moved to yet another students desk and Mrs Olsen moved in his way. This continued for a short time and then Beau went over to Mrs Gorlick’s 1:1 reading and began disrupting this. Mrs Gorlick and the student reading ignored Beau and he came back to the desk area and started hitting things off the students desks and disrupting them. He then went over to the bench where students place their lunch boxes and was quiet for awhile so Mrs Gorlick invited him to do 1:1 reading with her once the other student had finished.

(Errors in the original.)

1. On 29 May 2015, Ms Green recorded the following incidents:

Beau refused to do any work this morning despite being given 1:1 assistance, scribing offered and multiple atttempts by staff to assist him.

…

Beau has been disruptive all middle session, not participating in silent reading, taking other students books off them, knocking counters off rotations games, teasing [name redacted] about his reading leaving -your not a good reader your only level 3 thats too easy you cant read” He then did this to [name redacted] as well. Beau requried us to step between him and another student doing rotations as he kept targeting that students counter in the game causing [name redacted] to become distressed. He was non-compliant and would not attempt to do as asked and wanted to play a particular game.

(Errors in the original.)

1. On 29 May 2015, the following incident was also recorded by Ms English:

When Beau was brought to my room he was non-compliant with what was asked of him. The teacher aide had to stand in the door to prevent him from running out of the room. I tried to talk to him but he did not speak to me at all. I rang his Mum and explained he would be suspended and she said to take him up to the top office. I then told Beau he would be suspended for 5 days becuase of his non-compliance and he became very angry. He kept saying that if I would just suspend [name redacted] then everything would be alright. He said this a number of times. We walked him to the class and he kept running away from us. He went to [name redacted]’s class and Thomas came out of the class and walked Beau behind the building asking what was wrong. I explained to Thomas he needed to go and eat his lunch and he left. Beau saton the seat for a minute but would not talk to me and then ran towards the Year 4 eating area. The teacher aide took his arm and started walking him to the office, he was trying to hit her and puull her hand off and would hit out out me when I tried to take his hand. In order not to aggravate him further I said I would not take his hand if he would stop hitting Mrs Olsen. He was not compliant with this. We got him to the office and he refused to sit still and kept trying to run of so we sat either side of him. This became difficult so we took him to Mr Bulger’s office and Mrs Olsen monitored the window which he kept trying to climb out of and i Monitored the door which he also tried to get out of by pushing me out of the way. Julie arrived to pick him up and he went with her without any issues.

(Errors in the original.)

1. On 29 May 2015, Ms English recorded the following contact with Julie Connor:

I phoned to explain that Beau was again being non-compliant and disruptive in the classroom. I said that this had occurred a number of times over the last week and so and as I had indicated earlier in the week I was going to suspend him for 5 days. Julie said to have him up at the office and she would collect him. She did ring back about 30 minutes later saying she knew why Beau had been so disruptive and said that [name redacted] had been giving Beau the finger at break time and this had set Beau off. I explained that [name redacted] was away today. She said no Beau had seen him and I said I could only tell her that [name redacted] was away today. She said she would sort it and hung up.

1. On 1 June 2015, Mr Boss-Walker decided to suspend Beau for five days because of misbehaviour as he had been disruptive in class, did not follow directions and purposely disrupted other students.
2. On 19 June 2015, Ms Green recorded the following incidents:

Beau decided to push his desk up to the whiteboard he started pulling things off the board, timer, clock etc and playing with them. Refused to move back away from the board and had to be physically moved. Refused to do his English task was walking around the room RT wrote beginning on papaer for him to copy his refused and laid on his desk. Next he was redirecteed by Mrs Olsen and he began copyint the story beginning but very soon gave up and started wondering around disjrupting others and went around to the staff area where other students were working on the computers. He was disrupting them and annoying them and would not follow directions back around to the room.

…

Beau came in from morning tea refusing to sit on the carpet despite various attempts to get him to comply and various strategies. Beau wandered around the room. When student’s were asked to move to their desks Beau began constantly annoying [name redacted] and picking on her. Beau would not do his work and was upsetting [name redacted] so Mrs Gorlick had to call him over to her where he distracted the students she was working with.

(Errors in the original.)

1. On 22 June 2015, Mr Boss-Walker decided to suspend Beau for five days because Beau had persistently demonstrated disruptive behaviours and refused to participate in the program of instruction, including hitting a student and calling other students inappropriate names.
2. Following a number of incidents on 12 August 2015, Beau was suspended for ten days because he had refused to participate in the program of instruction, was rude to staff members, left the classroom without permission, was disruptive in class and tried to hit another student.
3. On 13 August 2015, a Personalised Learning Plan was implemented.
4. Beau did not return to the School after 26 August 2015 and instead enrolled at Urangan Point State School. Ms Leisa Staunton, Head of the Special Education Program, gave evidence that the supports provided to Beau at Urangan Point State School included teacher aide support in the classroom for Beau and other students, an Individual Curriculum Plan which allowed teaching of the curriculum at a different year level for English and mathematics and support to manage any behaviours that may occur. Urangan Point State School did not have a specific withdrawal room, but there was space within the Special Education Unit building Beau could retreat to. Ms Staunton was aware of Beau being physically restrained twice over a period of 18 months. He was not suspended. Beau was able to attend a camp with Ms Staunton providing one-on-one support to him.
5. Ms Staunton stated that Urangan Point State School worked with Beau to develop rapport and allow him to deal with things that would come up. There was seemingly an increase in the heightened behaviours from Beau in early to mid-2016, but, working with the family, that petered out over time. Some of Beau’s behaviours included wandering around the classroom, sitting on desks and chairs, annoying others, kicking chairs and belongings, rolling around the floor, calling out and not following directions.

## Other relevant documents

1. The School adopted the *Kawungan State School 2012–15 Responsible Behaviour Plan for Students* (**the** **School Plan**). The School Plan was said to be designed to facilitate high standards of behaviour so that learning and teaching in the School could be effective and students could participate positively within the School community. The School Plan had a section dealing with physical intervention, as follows:

Staff may make legitimate use of physical intervention if all non-physical interventions have been exhausted and a student is:

* physically assaulting another student or staff member;
* posing an immediate danger to him/herself or to others.

Appropriate physical intervention may be used to ensure that Kawungan State School’s duty of care to protect students and staff from foreseeable risks of injury is met. The use of physical intervention is only considered appropriate where the immediate safety of self or others is threatened and the strategy is used to prevent injury.

Physical interventions can involve coming between students, blocking a student’s path, leading a student by the hand/arm, shepherding a student by placing a hand in the centre of the upper back, removing potentially dangerous object and, in extreme situations using more forceful restraint.

It is important that all staff understand:

* physical intervention cannot be used as a form of punishment;
* physical intervention must not be used when a less severe response can effectively resolve the situation
* the underlying function of the behaviour.

Physical intervention **is not** to be used as a response to:

* property destruction
* school disruption
* refusal to comply
* verbal threats
* leaving a classroom or the school unless student safety is clearly threatened.

Any physical intervention must:

* be reasonable in the particular circumstances
* be in proportion to the circumstances of the incident
* always be the minimum force needed to achieve the desired result, and
* take into account the age, stature, disability, understanding and gender of the student.
1. The School Plan required that each instance involving the use of physical intervention must be formally documented.
2. The *Safe, Supportive and Disciplined School Environment Procedure* required the School to consider training that, inter alia, respected the rights of the student and kept risks to a minimum, reduced the need for restraining as far as possible and held the view that restraining students is for their safety and is never about discipline or punishment. The evidence does not demonstrate any failure by the School to consider or provide training of this kind.

## Consideration

### The First Allegation: Suspensions

1. The statement of claim alleges that the State unlawfully discriminated against Beau in contravention of s 22(2)(a) and (c) of the DDA on the ground of his disability by limiting his access to a benefit, or by subjecting him to detriment.
2. The detriment alleged is that Beau was subjected to eleven “formal suspensions” and ten “informal suspensions” between 2011 and 2015. The benefits to which Beau’s access is alleged to have been limited are full access to the academic curriculum, an environment that promoted successful socialisation with other students and a safe school environment
3. The “informal suspensions” are alleged to be occasions when Beau’s parents were called to take him home from school during normal teaching hours. This is alleged to have occurred on the following dates:
* 2 March 2011;
* 15 October 2012;
* 22 March 2013;
* 2 August 2013;
* 19 November 2013;
* 28 February 2014;
* 13 June 2014;
* 25 February 2015;
* 17 March 2015;
* 29 May 2015.
1. The “formal suspensions” are alleged to have occurred on the following dates:
* 16 October 2012 (10 days);
* 7 November 2012 (16 days);
* 7 February 2013 (20 days);
* 5 November 2014 (2 days in-house);
* 5 February 2015 (5 days in-house);
* 27 February 2015 (3 days);
* 6 March 2015 (5 days);
* 18 March 2015 (10 days);
* 1 June 2015 (5 days);
* 22 June 2015 (5 days);
* 13 August 2015 (10 days).
1. The OneSchool records suggest that on 5 November 2014 and 5 February 2015, Beau was given detentions, rather than formal suspensions. However, as no point was taken about this by the State, I accept that Beau was subjected to the formal suspensions alleged.
2. I find that Beau was subjected to the “informal suspensions” alleged, with one exception. The exception is the allegation that Beau was informally suspended on 22 March 2013. The allegation is not particularised and I have been unable to locate any entry in the OneSchool records for that date. I do not accept that Beau’s parents were asked to pick him up from the School early on that date.
3. It is arguable that not all the informal suspensions involved a detriment. Many occurred when Beau was acutely distressed at the School through no evident fault of any staff member or student. In those cases, it is difficult to see why removing him from the place and circumstances that were causing him such distress would not be for his benefit. However, the State did not argue the case in that way. In the circumstances, I accept that both the formal and informal suspensions involved a detriment to Beau and limited his access to a benefit, which can be broadly described as being deprived of the full educational benefits that would otherwise be provided by the State.
4. Beau has been diagnosed with ASD and PDD-NOS, as well as other conditions. The definition of “disability” in s 4 of the DDA includes a “disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour”. The definition also states that a disability includes behaviour that is a symptom or manifestation of the disability. I accept that Beau’s disturbed behaviours resulted at least substantially from his diagnosed conditions. The State concedes, and I accept, that Beau has a “disability”.
5. The controversy is whether, within s 5(1) of the DDA, the State treated Beau, “because of the disability…less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different”. The statement of claim alleges that the suspensions were imposed directly due to Beau’s disabilities. The defence denies that Beau was suspended because of his disability and alleges that he was suspended due to his aggressive and non-compliant behaviour towards the School’s staff and students.
6. This case shares substantial factual and legal similarities with *Purvis v New South Wales* (2003) 217 CLR 92. In that case, the appellant had suffered a brain injury which resulted in intellectual disabilities which manifested, at times, in aggressive behaviour such as hitting and kicking. He was excluded from school after five suspensions for acts of violence against staff or students. The appellant alleged that the school authority had engaged in direct discrimination against him contrary to s 22(2)(a), (b) and (c) of the DDA.
7. The High Court considered the nature of the comparison required under s 5(1) of the DDA. It was apparent that the appellant’s disturbed behaviour was part of his disability. He argued that as he was excluded from the school because of his disturbed behaviour, he was excluded “because of” his disability. The appellant submitted that the appropriate comparison was between the treatment accorded to him and the way a student without his disability and without the behaviours produced by his disability would have been treated. He argued that he was treated less favourably than a student without the disability because such a student would not have engaged in disturbed behaviour and, therefore, would not have been excluded. In contrast, the school authority submitted that the appropriate comparison was between the treatment accorded to the appellant and the treatment that would have been accorded to a student who was not disabled but who had acted as the appellant did.
8. The plurality (Gummow, Hayne and Heydon JJ) rejected the appellant’s argument. Their Honours held:

[224] The circumstances referred to in s 5(1) are all of the objective features which surround the actual or intended treatment of the disabled person by the person referred to in the provision as the ‘‘discriminator’’. It would be artificial to exclude (and there is no basis in the text of the provision for excluding) from consideration some of these circumstances because they are identified as being connected with that person’s disability…All of the circumstances of the impugned conduct can be identified and that is what s 5(1) requires. Once the circumstances of the treatment or intended treatment have been identified, a comparison must be made with the treatment that would have been given to a person without the disability in circumstances that were the same or were not materially different.

[225] In the present case, the circumstances in which Daniel was treated as he was, included, but were not limited to, the fact that he had acted as he had. His violent actions towards teachers and others formed part of the circumstances in which it was said that he was treated less favourably than other pupils. Section 5(1) then presented two questions: (i) How, in *those* circumstances, would the educational authority have treated a person without Daniel’s disability? (ii) If Daniel’s treatment was less favourable than the treatment that would be given to a person without the disability, was that because of Daniel’s disability? Section 5(1) could be engaged in the application of s 22 only if it were found that Daniel was treated less favourably than a person without his disability would have been treated in circumstances that were the same as or were not materially different from the circumstances of Daniel’s treatment.

1. The plurality continued at [236]:

[236] …[T]he central question will always be — *why* was the aggrieved person treated as he or she was? If the aggrieved person was treated less favourably was it “because of”, “by reason of”, that person’s disability. Motive, purpose, effect may also bear on that question.

1. Similarly, Gleeson CJ held at [13]:

[13] …The fact that the pupil suffered from a disorder resulting in disturbed behaviour was, from the point of view of the school principal, neither the reason, nor a reason, why he was suspended and expelled…If one were to ask the pupil to explain, from his point of view, why he was expelled, it may be reasonable for him to say that his disability resulted in his expulsion. However, ss 5, 10 and 22 [of the DDA] are concerned with the lawfulness of the conduct of the school authority, and with the true basis of the decision of the principal to suspend and later expel the pupil. In the light of the school authority’s responsibilities to the other pupils, the basis of the decision cannot fairly be stated by observing that, but for the pupil’s disability, he would not have engaged in the conduct that resulted in his suspension and expulsion. The expressed and genuine basis of the principal’s decision was the danger to other pupils and staff constituted by the pupil’s violent conduct, and the principal’s responsibilities towards those people.

1. As Tracey J observed in *Walker v State of Victoria* [2011] FCA 258 at [71]:

The Court is, therefore, required to determine, as a question of fact, *why* (in the sense of “the real reason” or “true basis”) the impugned conduct occurred.

1. In *Walker v State of Victoria* [2012] FCAFC 38, Gray J (with whom Reeves J agreed) observed at [73]:

When dealing with discrimination by less favourable treatment, it is clear that the proper comparator is a student with the same behavioural characteristics, but without the disabilities, of the student in respect of whom such discrimination is alleged.

1. It is necessary to decide whether a student without Beau’s disability who engaged in the same behaviour would have been subjected to the same formal and informal suspensions. Even though Beau’s disturbed behaviour was a manifestation of the impairment of his thought processes or emotions, his behaviour forms part of the relevant circumstances and cannot be excluded from consideration. If it is decided that Beau was treated less favourably than a student without Beau’s disability would have been treated, it will be necessary to decide whether that was because of Beau’s disability.
2. The decisions to formally suspend Beau were made by Ms Christie, Mr Fay and Mr Boss-Walker. Peter Connor alleges that they made the decisions to suspend Beau because of his disability.
3. There is no letter in evidence notifying Beau and his family of the suspension beginning on 16 October 2012. However, Ms Christie, who was then the Acting Principal, deposes that she decided to suspend Beau for his physical violence and disruptive behaviour. She deposes that she did not discriminate against Beau because of any disability. I accept her evidence.
4. On each other occasion when Beau was formally suspended, the decision-maker wrote to Beau and his parents giving reasons for the decision to suspend him. On 7 November 2012, Mr Fay wrote saying he had decided to suspend Beau because of his behaviour, including kicking, pinching, scratching, spitting at and attempting to bite staff-members and throwing property. On 8 February 2013, Mr Fay decided to suspend Beau for behaviours including kicking, pinching, punching, scratching and attempting to bite staff members, attempting to stab a Deputy Principal with a screw, damaging property and throwing objects.
5. On 27 February 2015, Mr Boss-Walker wrote saying that he had decided to suspend Beau because of his behaviour, consisting of failure to complete any work and consistently disrupting his class for more than half the day. That behaviour was said to have been evident and recorded 22 times in the previous 24 days. On 6 March 2015, Mr Boss-Walker decided to suspend Beau because he had physically assaulted another student. On 18 March 2015, Mr Boss-Walker decided to suspend Beau because he had hit and grabbed another student, had refused to answer a teacher when questioned about the incident and was not participating in the program of instruction. On 1 June 2015, Mr Boss-Walker decided to suspend Beau as he had been disruptive in class, did not follow directions and purposely disrupted other students. On 22 June 2015, Mr Boss-Walker decided to suspend Beau because he had persistently demonstrated disruptive behaviours and refused to participate in the program of instruction, including injuring another student. On 13 August 2015, Mr Boss-Walker wrote saying he had decided to suspend Beau because of disobedience, including refusing to follow instructions, not participating in the program of instruction, being rude to staff members and other students, throwing items at other students, trying to hit another student and engaging in other disruptive behaviour.
6. Mr Boss-Walker’s letters stated that he had taken into account Beau’s diagnosis of PDD-NOS. Mr Boss-Walker’s evidence was that the diagnosis was taken into account in Beau’s favour because it might explain why he had behaved as he had. I accept that evidence and find that Beau’s disability was not used against him when the relevant decisions were made.
7. I accept that the reasons stated in the letters reflected the true reasons for each formal suspension. The reasons given involved Beau’s behaviour, including disruption, non-compliance or physical violence. On each occasion when Beau was suspended, his behaviour provided ample grounds to justify the decision. Ms Christie, Mr Fay and Mr Boss-Walker depose that the decisions to suspend him were made because of Beau’s behaviour. I find that the true reason why Beau was suspended on each occasion was his behaviour, not his disability.
8. Having found that Beau’s formal suspensions were because of his behaviour, I infer that if a student without Beau’s disability had engaged in similar behaviour, that student would also have been similarly suspended. Accordingly, I find that Beau was not treated less favourably than a student without his disability would have been treated in the same circumstances.
9. I will next consider whether the informal suspensions fall within s 5(1) of the DDA. The first informal suspension was on 2 March 2011 after Beau kicked, scratched, spat at and tried to bite Ms McNamara and Mr Fay (and was subsequently formally suspended for two days). The second was on 15 October 2012 after Beau engaged in destructive behaviour and physical violence against Ms Pitt (and was subsequently formally suspended for ten days).
10. The third informal suspension is alleged to have been on 22 March 2013 after Beau refused to work, threw items and engaged in other disruptive behaviour in Ms Jensen’s class. As I have said I do not accept that Beau’s parents were asked to pick him up early from School on that date.
11. The fourth informal suspension was on 2 August 2013 after Beau refused to work in Ms Flannery’s class, was disruptive and evidently upset about an incident that had happened during a break. The fifth was on 19 November 2013 after Beau was non-compliant in his Special Education Program class, walked out of the class and disrupted his brother’s class. The sixth was on 28 February 2014 when Beau was upset and engaged in behaviours that included climbing on louvres and ultimately fell asleep.
12. The seventh informal suspension was on 13 June 2014 after Beau continually disrupted the class and was non-compliant. The eighth was on 25 February 2015 after Beau refused to do any work and engaged in disruptive behaviour including climbing on desks, hiding and trying to climb out of windows in Ms Green’s class. The ninth was on 17 March 2015 after Beau got into a fight with another student (and was subsequently suspended for ten days). The tenth was on 29 May 2015 when his mother was asked to collect him early after Beau had been non-compliant and disruptive in Ms English’s class.
13. I am satisfied that on each occasion when Beau’s parents were asked to pick him up early from the School, it was because of Beau’s disruptive or violent behaviour at the School or because he was distressed. I am satisfied that his behaviour or distress was the true reason why each of the informal suspensions occurred. I infer that if a student without Beau’s disability had engaged in the same behaviour, or had been similarly distressed, the parents of that child would also have been asked to collect the student early. Accordingly, I find that by being subjected to the informal suspensions, Beau was not treated less favourably than a student without his disability would have been treated in circumstances that were the same.
14. The statement of claim also alleges that the State failed to provide the supports that students in government schools can receive. These supports are alleged to include being treated with respect and dignity, a formal social skills program, a formal language program/speech therapy, a sensory program developed and overseen by an occupational therapist, an external expert to address Beau’s behaviours of concern and a comprehensive Individual Education Plan.
15. I will assume in Beau’s favour that this allegation relies upon s 5(2) of the DDA. Under that provision, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability if the discriminator does not make “reasonable adjustments” for the aggrieved person, and that failure has the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different. Section 5(3) provides that circumstances are not materially different because of the fact that, because of the disability, the aggrieved person requires adjustments.
16. Section 5(2) was introduced by the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* (Cth). The Explanatory Memorandum states that the amendments were designed to remove doubt by, “making explicit the duty to make reasonable adjustments, which are defined to exclude adjustments that would impose unjustifiable hardship”.
17. Section 4(1) of the DDA provides that, “an adjustment to be made by a person is a ***reasonable adjustment*** unless making the adjustment would impose an unjustifiable hardship on the person”. In *Watts v Australian Postal Corporation* [2014] FCA 370, Mortimer J held at [27]:

[27] The somewhat absolute nature of the definition of reasonable adjustment has tangible consequences for potential discriminators. There is no room in the operation of s 5(2) for a discriminator, or a Court, to assess conduct, or modifications, by reference to notions of reasonableness. The statute removes that capacity. Unless a modification involves unjustifiable hardship, it will by operation of s 4 be a reasonable adjustment and the discriminator must make it “for” the person, to avoid the consequences s 5(2) (read with other provisions in the DDA) might otherwise impose. The legislative choice about what is “unreasonable” for the purposes of this scheme is expressed in the inherent requirements exception, and in the concept of unjustifiable hardship…One consequence is that what constitutes “hardship” and the circumstances in which it might be “unjustifiable” may be broader than if the statute used reasonableness as a criterion of liability.

1. However, the “absolute nature” of the requirement to make reasonable adjustments applies only in the limited circumstances provided for under s 5(2) of the DDA.
2. In *Sklavos v Australian College of Dermatologists* (2017) 256 FCR 247 at [33], Bromberg J (with whom Griffiths and Bromwich JJ agreed on this issue) held that the question identified in *Purvis* at [213] in respect of s 5(1) also arises under s 5(2), namely whether the less favourable treatment was “because of” the applicant’s disability.
3. In *Varasdi v State of Victoria* [2018] FCA 1655, O’Callaghan J held at [31]–[33] that the applicant must demonstrate a causal nexus between the alleged failure to provide reasonable adjustments and the aggrieved person’s disability. His Honour also held that the failure to make the reasonable adjustments must have the effect that the aggrieved person was treated less favourably because of the disability: see also *Tropoulos v Journey Lawyers Pty Ltd* [2019] FCA 436 at [140] per Collier J. His Honour observed at [34] that, “It is not sufficient to assert that something is a reasonable adjustment and allege, without more, that it was not provided”.
4. The statement of claim refers to the “supports” alleged to have not been provided. Assuming that the “supports” are intended to refer to “reasonable adjustments” that should have been made, there is no pleading that their non-provision had the effect that Beau was treated less favourably because of his disability. However, since Beau is no longer legally represented, I will treat the statement of claim as making such an allegation.
5. For the purposes of s 5(2) of the DDA, it is necessary to consider:
6. Whether the aggrieved person has, because of his or her disability, been treated less favourably than a person without that disability would be treated in circumstances that are the same or not materially different.
7. Whether the alleged discriminator did not make the reasonable adjustments for the aggrieved person that are alleged not to have been made.
8. Whether there is a causal nexus between the alleged failure to provide reasonable adjustments and the aggrieved person’s disability.
9. Whether the failure to make the reasonable adjustments has had the effect that the aggrieved person was treated less favourably because of his or her disability.
10. Where pleaded by the alleged discriminator, whether the adjustments alleged not to have been made were “reasonable adjustments”.
11. As to the first issue, I have found that Beau was suspended from the School because of his behaviour, not his disability. He was therefore not discriminated against because of his disability. The claim under s 5(2) of the DDA must fail for this reason alone.
12. I will consider the second, third and fourth issues for completeness. The statement of claim alleges that the State failed to treat Beau with respect and dignity. That is a broad and vague allegation. In the absence of particularisation, I infer that the allegation is that Beau was not treated with respect and dignity, leading to the behaviours that led to his suspensions. The allegation does not readily fit within the description of failure to provide a “reasonable adjustment for the person”, since all students, regardless of any disability, can expect to be treated with respect and dignity. Whatever is meant, Beau was, in my view, treated with respect and dignity by the staff at the School. Their job was a difficult one, often requiring the exercise of quick judgment in response to situations of distressed behaviour and actual or threatened violence to staff and students. It is not to the point that, with the benefit of hindsight, it might be judged that the staff at the School could have done some things differently or better. As I have said, the staff carried out their duties with compassion and professionalism and with the best interests of Beau and the other students under their care in mind. I find that they did treat Beau with respect and dignity.
13. The statement of claim alleges that the School failed to provide an external expert to address Beau’s behaviours of concern. There is no particularisation of what type of external expert ought to have been engaged, or why an external person was necessary or beneficial. There is evidence that an expert external to the School (but employed by the State), Ms Cooper, was engaged to provide assistance and strategies in respect of Beau’s behaviours of concern. Ms Cooper was an experienced specialist in the provision of assistance and guidance to schools and teaching staff on matters of student engagement. Ms Schloss, who was a specialist Guidance Officer within the School, was also heavily involved in developing strategies to deal with Beau’s behaviours. So too was Ms English as Head of the Special Education Program, whose evidence was that she worked with Ms Cooper, Ms Schloss and Mr Bulger on strategies to support Beau and get him engaged with the curriculum, including regular discussions and reflection on what to do. Further, the classroom teachers who taught Beau were experienced teachers who deployed a range of strategies to try to engage Beau with learning and to address his behaviour when he was disruptive. I will deal with the strategies adopted by the School more fully in relation to the Third Allegation.
14. I reject the allegation that an external expert was not engaged, since Ms Cooper was engaged. Further, I am not satisfied on the evidence that engaging a different external expert would have made any material difference to Beau’s behaviours.
15. The statement of claim also alleges that Beau should have been provided with a formal social skills program. There is evidence that after Beau had been diagnosed with ASD and verified, he received part of his schooling in the Special Education Program. The Special Education Program had a social skills program that Beau participated in. Beau was also referred to the Bay Safety Mates Program, which provided assistance with friendships/healthy relationships, managing anger and emotional intelligence. Beau also participated in the Positive Learning Centre program, which aimed to integrate students into mainstream schooling. I reject the allegation that Beau was not provided with a formal social skills program.
16. The statement of claim alleges that Beau should have been provided with a formal language program or speech therapy. The nature and purpose of such supports was not particularised. While Beau did have well-documented difficulties with not engaging in dialogue about what his concerns were and with articulating his feelings, the evidence does not demonstrate that these supports would have been useful or productive interventions. Beau’s teachers adopted strategies such as reminding Beau to use his words rather than acting out and using non-verbal communication methods. It has not been demonstrated that a formal language program or speech therapy would have made any material difference to the behaviours his disability evidently produced.
17. The statement of claim alleges that Beau should have been provided with a sensory program developed and overseen by an occupational therapist and a comprehensive Individual Education Plan. There is evidence of sensory aids being provided. For example, Beau was provided with fidget toys and visual aids, while velcro dots were used, and he was also offered sand-therapy. The evidence does not demonstrate that a sensory program developed and overseen by an occupational therapist could have made any difference to Beau’s behaviour. I note that an occupational therapist’s report was provided to the School and there is evidence that a number of the strategies she suggested were in place. The evidence does not indicate whether all of the strategies she suggested, such as scented pens, were adopted. However, the onus of proving they were not provided is upon the applicant, and I am not satisfied that they were not provided. Further, to the extent that any such strategies were not adopted, I am not satisfied that they would have made any material difference to Beau’s behaviours, in view of the evident severity of his disabilities and the behaviours they produced. I also reject the allegation that Beau was not provided with a comprehensive Individual Education Plan, having regard to the Class Behaviour Management Plan dated 27 February 2013 and the Individual Behaviour Support Plans dated 6 February 2014, 29 April 2014 and 13 February 2015, which I will discuss further in relation to the Third Allegation.
18. I should add that the statement of claim pleads that by suspending Beau, the State treated Beau less favourably that it would treat a student who required intensive support to understand social expectations, comply with social and behavioural expectations and requirements and maintain positive friendships. It is unclear what this allegation means. It may allege that Beau was treated less favourably than students with similar disabilities producing similar behaviours would have been treated. If so, it may be simply an allegation that Beau was suspended because the staff at the School did not like him. That perhaps reflects an allegation made by Beau’s mother at times. However, at a factual level, I reject the allegation. At a legal level, even if it were true, it would be irrelevant – the basis of unlawful discrimination under the DDA is disability and the behaviours associated with a disability, not mere dislike of a person.
19. For completeness, I should mention that the defence pleads that the adjustments alleged not to have been made were not “reasonable adjustments” as they would impose unjustifiable hardship on the State. However, the State did not lead evidence in support of this allegation or make submissions in support of it. I therefore reject the allegation.

### The Second Allegation: Physical Restraint/Seclusion

1. The statement of claim alleges that Beau was subjected to “physical restraint/violence” by staff at the School on the following dates:
* 2 March 2011;
* 22 March 2011;
* 25 March 2011\*;
* 8 October 2012;
* 15 October 2012;
* 29 January 2013;
* 30 January 2013\*;
* 31 January 2013 (the pleaded date of 3 January 2013 seems to be an error);
* 6 February 2013\*;
* 18 March 2013\*;
* 5 February 2014\*;
* 19 February 2014\*;
* 16 October 2014;
* 24 February 2015\*;
* 25 February 2015\*;
* 26 February 2015\*;
* 5 March 2015\*;
* 16 March 2015\*;
* 17 March 2015\*.
1. I have placed an asterisk against the dates when it is alleged that Beau was also subjected to “seclusion/isolation” at the School.
2. The statement of claim also alleges that Beau was subjected to seclusion/isolation, but not physical restraint/violence on the following dates;
* 28 February 2014;
* 28 March 2014;
* 22 February 2015;
* 23 February 2015;
* 27 May 2015;
* 29 May 2015.
1. I am satisfied that Beau was physically restrained on each of the dates alleged, except 26 February 2015 for which there is no evidence of physical restraint. The OneSchool record states Beau had to be “escorted” to the Withdrawal Room, but there is no evidence that this involved a physical restraint.
2. The use of the term “violence” is pejorative and seems calculated to connote the deliberate infliction of pain. I reject any allegation that staff members deliberately inflicted pain upon Beau.
3. I am not satisfied that Beau was secluded on 25 March 2011 and 29 May 2015. On those dates, he was physically restrained in the Principal’s office and Deputy Principal’s office respectively, but I am not satisfied that he was left alone in either room. The evidence does not support the allegations that Beau was secluded on 5 February 2014, 22 February 2015 or 27 May 2015. I am otherwise satisfied that Beau was secluded in the Withdrawal Room for a period of time on each of the dates alleged.
4. The State might have argued that the physical restraint of Beau was for his benefit, not to his detriment, at times when his behaviour created a risk of harm to himself. Further, it might have been argued by the State that Beau’s seclusion was for his benefit because it allowed him an opportunity to settle down and return to class, rather than being immediately sent home. Beau in fact settled down and returned to class on a number of occasions. However, the State has not argued the case in that way. Therefore, I accept that Beau suffered detriment by being physically restrained and secluded. In the absence of argument to the contrary, I also accept that Beau’s access to a benefit, namely the full educational benefits provided by the State, was limited during the periods when he was restrained or secluded.
5. The statement of claim pleads that Beau was subjected to a further detriment, namely physical and psychological harm. The evidence of staff members, such as Ms English, Ms Green, Ms Olsen, Ms Stevens, Ms Pitt, Ms McNamara, Mr Fay and Mr Bulger, indicates that generally two people would restrain Beau and that they would restrain him in such a way as to avoid injury to Beau and to avoid Beau injuring them. Peter Connor suggested in cross-examination that Beau had suffered a fractured arm as a result of being dragged by Ms English, but she denied that and there is no evidence to support that suggestion. Julie Connor deposes that Beau told her in about 2015 that Ms English had scratched and marked him and told her in about July 2015 that Ms English had scratched his chest when placing him in the Withdrawal Room. Ms English denied that she had caused injuries to Beau and I accept her evidence. I do not accept that Beau was subjected to physical harm. The statement of claim also goes so far as to allege that Beau’s treatment put him at risk of death. That allegation is far-fetched and must be rejected.
6. I accept that the physical restraints of Beau were reasonable, proportionate and the minimum necessary. I accept that the restraints complied with the School Plan.
7. I have discussed the evidence of Mr Wendt, the psychologist. I do not accept his opinion that Beau sustained PTSD as a result of his physical restraint or seclusion. I do not accept that Beau sustained any form of psychological harm as a result of the actions of the School staff.
8. The statement of claim alleges that the physical restraint and seclusion of Beau was directly due to Beau’s disabilities. It alleges that Beau was treated less favourably than a student without Beau’s disabilities attending a government school would have been treated.
9. Each incident where Beau was physically restrained was recorded in the OneSchool system. The records show that on each occasion, the restraint was in response to a risk of harm to students, staff or Beau himself. On some occasions, Beau had already physically assaulted students or staff. On other occasions, the risk of harm was less evident, but still present. An example of this is that Beau was restrained on occasions to stop him from running away. This was in the context, as Mr Fay deposed, where the School was located next to a busy road.
10. On some occasions, the restraint consisted of Ms Bradford, Beau’s Grade 1 teacher, holding Beau in what she described as a “comforting bear hug”. Julie Connor states that she never consented to Beau receiving a bear hug when removing him from a classroom and never consented to Beau being restrained in any other way or for any other purpose. I reject that aspect of Julie Connor’s evidence. I accept that it was a regular practice that Ms Bradford would hold Beau in a bear hug until his mother had left and Beau calmed down. I find that this was done with Julie Connor’s knowledge and agreement.
11. I also find that Julie Connor was aware of, and agreed to, Beau being restrained at other times. For example, Ms Stevens recorded on 30 January 2013, that Julie Connor said she was happy if staff restrained Beau, but would rather that Special Education Program staff did it because a normal teacher could hurt themselves trying to pick Beau up. In her appeal against Beau’s suspension made on 15 February 2013, Julie Connor noted that staff had restrained Beau, but he felt threatened when he was restrained and responded by lashing out. She said that she had explained this to the School, but they continued to restrain him. In the School’s response to her submission, it was indicated that restraining Beau was certainly not the preferred option of School staff and was only ever used as a last resort and when other students, staff or Beau himself were at risk. In its letter to Julie Connor rejecting the appeal, that was reiterated by the Department of Education. I do not accept that Julie Connor ever sought to forbid the practice of restraining Beau.
12. I find that Beau was physically restrained as a last resort in circumstances where he had hit, kicked or otherwise physically harmed students or staff or where his behaviour posed a risk of harm to students, staff or Beau himself. Importantly, for the purposes of s 5(1) of the DDA, I accept that each time Beau was physically restrained, it was because of the behaviour that Beau was engaging in. I reject the submission that Beau was restrained because of his disabilities. It may be accepted that his behaviours were part of his disabilities. However, as *Purvis* makes clear, the appropriate comparison is between Beau and a student without Beau’s disabilities who engaged in the same behaviour. I find that if a student without Beau’s disabilities had engaged in behaviour which similarly harmed or placed at risk of harm the student, other students or staff, then that student would also have been restrained.
13. Beau was secluded on a number of occasions in the Withdrawal Room. There were external louvre windows to the Withdrawal Room. These were partially boarded up because Beau had tried to climb the lower louvres. I accept that the lights were not always on and the natural light in the room was somewhat dim. That was done deliberately, together with the absence of stimulus in the room and the use of bland colours, to create a calming atmosphere. The Withdrawal Room was in the Special Education Unit and was, as Ms Christie described it, “a calm place where the students could go” to withdraw or take a break. She states that some students with ASD liked to go into the room. I reject Julie Connor’s evidence that the room was in darkness.
14. Ms Green deposes, and I accept, that the Withdrawal Room was used as a place of safety for any child whose behaviour posed a risk to the safety of themselves or anyone else. There was a glass window in the door to the Withdrawal Room. It was one-way glass, which allowed staff to observe the student. The evidence of Ms English and Ms Green, which I accept, is that students in the Withdrawal Room were supervised at all times.
15. The Withdrawal Room had an external lock. The lock was placed there as a safety measure because Beau had opened and slammed the door shut continually, creating the risk of injury to himself or other people. That was an appropriate safety measure and was not punitive.
16. Julie Connor deposes that until 13 March 2015, she had no idea that Beau was being placed in the Withdrawal Room. However, the Individual Behaviour Support Plan that Julie Connor signed on 29 April 2014 specifically states that part of the plan for escalated behaviour was that Beau could be placed in the Withdrawal Room until he was calm enough to go back to class, and that if he had not calmed down within 30 minutes of being in the Withdrawal Room, his mother would be called to collect him. In another Individual Behaviour Support Plan signed by Julie Connor on 13 February 2015, it was again indicated that Beau could be placed in the Withdrawal Room if aggressive, and that he could signal that he was ready to come out when he sat quietly against the wall or on the mat, and that if he had not calmed down after 40 minutes, his mother would be called to collect him. On 28 January 2015, Ms Clarry recorded that she told Julie Connor that she wanted to extend Beau’s time in the SEP and that she had concerns for his safety as she did not have a Withdrawal Room, and that Julie was supportive of that proposal. Ms Schloss deposes that she understood that Julie was aware that Beau was being taken to the Withdrawal Room and she never seemed to be alarmed or distressed that Beau was in the room. Therefore, I do not accept Julie Connor’s evidence that she was not aware until 13 March 2015 that Beau was being placed in the Withdrawal Room.
17. There was an incident on 13 March 2015, when Julie Connor picked Beau up from the Withdrawal Room. While she was in the room with Beau, the door was locked from the outside. She banged on the door and shouted for 20 minutes without anyone letting them out. She eventually phoned the School by telephone and was let out. The particular relevance of this incident to the present case is that it may suggest that there were occasions when Beau was in the Withdrawal Room, but was left unsupervised. I do not accept that this was so. Ms Green deposes that Julie Connor went into the Withdrawal Room and was talking to Beau. Ms Green walked away from the Withdrawal Room to give Julie and Beau some privacy, there no longer being any need to remain there once she had arrived. I accept that Beau had been supervised until Julie Connor arrived. The incident of Julie Connor being locked in the Withdrawal Room was an unfortunate accident but does not indicate any practice of simply leaving Beau unsupervised in the Withdrawal Room.
18. On each occasion when Beau was placed in the Withdrawal Room, it was done because Beau’s behaviour posed a risk of harm to himself, other students or other staff. I find that Beau was not placed in the Withdrawal Room because he had a disability, but because of his behaviours. At those times, Beau could not simply be left free in his classroom or outside his classroom—there were dangers involved with either course of action. In view of these dangers, it was necessary that he be restrained either by being physically held or left in a room from which he could not escape. A decision was taken to use the Withdrawal Room because of the danger posed to staff in trying to physically restrain Beau—the evidence of Ms McNamara of being covered in scratches and spit after trying to restrain him for an extended period providing a particularly graphic example. I infer that a student without Beau’s disability who engaged in the same behaviours that created the same risk of harm to themselves, other students or staff, would have been placed in the Withdrawal Room. I reject the allegation that by being placed in the Withdrawal room, Beau was treated less favourably than a student without Beau’s disability would have been treated in circumstances that were the same or not materially different.
19. Section 5(1) of the DDA is not satisfied in relation to Beau’s physical restraint and seclusion at the School. There was no contravention of s 22(2)(a) and (c) of the DDA as alleged in the Second Allegation.

### The Third Allegation: Reasonable Adjustment—Functional Behaviour Assessment and Behaviour Plan

1. The statement of claim alleges that the State failed to provide Beau with a Functional Behaviour Assessment and a Behaviour Plan. This is alleged to result in a failure to comply with s 5(2), resulting in contravention of s 22(a) and (c) of the DDA.
2. The statement of claim alleges that a Functional Behaviour Assessment is an assessment designed, in summary, to:

(a) identify and define target behaviour through data collection and analysis;

(b) identify when challenging behaviours occur, and the associated events or states;

(c) generate and test hypotheses concerning events that preceded and maintained the behaviour and the characteristics and patterns of the behaviour itself (a Functional Analysis); and

(d) inform the development of a Treatment/Behaviour Support Plan which is then monitored, evaluated and altered for its effectiveness.

1. The statement of claim alleges that a Functional Behavioural Assessment must be provided by someone qualified to undertake such an assessment. It alleges that a Functional Behaviour Assessment was required to determine the function of Beau’s behaviours of concern and ultimately mitigate and/or extinguish those behaviours in order to ensure the physical health and safety of Beau, staff and students, to avoid suspension, expulsion and violence at the hands of the State, allow Beau to retain his dignity at school and to allow him to reach his academic and social potential.
2. The statement of claim alleges that the respondent failed to provide Beau with a Functional Behaviour Assessment or a Behaviour Plan because it organised behavioural assessments and plans from people who did not have the qualifications to properly undertake them. Further, it is alleged that behaviour plans were developed without an understanding of the function of Beau’s behaviours, and they did not have measurable outcomes, were not formally monitored or reviewed, provided Beau with no structured assistance to learn pro-social behaviours, failed but were not altered, and were punitive.
3. The statement of claim alleges that the failure of the State to provide a Functional Behaviour Assessment and Behaviour Plan deprived Beau of the opportunity to have the function of his behaviours assessed and determined, have a Treatment/Behaviour Support Plan informed by such an assessment developed by an appropriately qualified person and implemented, have fewer, or no behaviours of concern, attend school without being suspended and be protected from practices which “subjected him to injury and death”.
4. The statement of claim alleges that the provision of a Functional Behaviour Assessment and Behaviour Intervention Plan was a reasonable adjustment and that the failure to provide those adjustments had the effect that Beau was, because of his disabilities, treated less favourably than students without his disabilities would be treated in circumstances not materially different. It alleges that the failure to provide Beau with a Functional Behavioural Assessment and Behaviour Intervention Plan resulted in him being suspended and experiencing physical and psychological harm.
5. The School developed a formal Class Behaviour Management Plan dated 27 February 2013 and formal Individual Behaviour Support Plans dated 6 February 2014, 29 April 2014 and 13 February 2015. Therefore, the allegation pleaded in the statement of claim does not, in reality, seem to be that no Functional Behaviour Assessment was carried out or that no Behaviour Plan was developed, but that those that were carried out or developed were inadequate.
6. Evidence was led from Ms Webb in support of the Third Allegation. Ms Webb’s evidence was that she was only provided with the Class Behaviour Management Plan dated 27 February 2013 and the Individual Curriculum Plan for Semester One, 2015. She may in fact have been provided with some other documents, but it is not apparent from her report that she had regard to any other documents. She also had a short interview with Julie Connor.
7. Ms Webb’s criticisms of the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan can be summarised as follows:
* They failed to show that the School made adjustments to the learning environment to support Beau’s sensory processing disorder and his diagnosis of autism.
* There is little evidence of curriculum modifications and adaptations to allow full access to learning opportunities.
* The School used punitive strategies, such as locking Beau in a room.
* Beau’s parents did not have significant input into strategies that the School were using and were not consulted on aspects of behavioural management decisions.
* No adjustment was made to take into account Beau’s interests (eg climbing trees) and adjustments to learning based on his interests.
* The focus of intervention was around Beau being compliant with staff whereas it should have been to work collaboratively with his family to develop a plan to meet his individual needs with a strong focus on goals and strategies.
* There was no Functional Behaviour Analysis conducted to identify the triggers leading to problematic behaviours.
* The School’s hypothesis that Beau wanted to avoid work and be sent home suggested that the School did not have an understanding of the purpose or function of his behaviours, and shows that the School placed the problem with the child.
* While Beau wanted to be liked by others and have social connectedness, he was placed in a situation where he was seen as devalued and seen as problematic by his peers, which affected the way he formed or maintained relationships with them.
* The 2013 Class Behaviour Management Plan showed little or no evidence of preventative, adaptive or reactive strategies that the School could use to support Beau.
* The 2013 Class Behaviour Management Plan showcased very little knowledge of certain characteristics and known strategies that would have supported a student with autism or ADHD including sensory learning, positive reinforcements, social stories, peer support, etc.
* The use of the Withdrawal Room was itself a trigger for Beau’s behaviours.
* Beau could have benefited from preventative strategies including visual stimulus, communication aids, sensory fidgets, cushions for sensory stimulation, assisted technology, inclusion of interests in his learning, adaptation and modification of learning tasks and constant positive reinforcement.
1. It does not appear from her report that Ms Webb had regard to the Individual Behaviour Support Plans of 6 February 2014, 29 April 2014 and 13 February 2015. She did not interview Beau in order to conduct any assessment of his abilities and needs. She was not given the OneSchool records concerning Beau’s behaviour at the School and the investigations and measures undertaken to help Beau. Ms Webb was unaware of the full range of strategies which the School deployed.
2. Ms Webb seems to regard the strategies to manage Beau’s behaviour as being purely punitive, but fails to recognise that managing Beau’s behaviour was integral to his ability to engage with the curriculum and learn. It was common for Beau to refuse to comply with directions by teachers to engage in school work, or even to remain at his desk during class. Beau frequently engaged in disruptive behaviour or had “meltdowns” during which he apparently lost control. It is true to say that in the School’s strategies, there was an emphasis upon management of Beau’s behaviour. Given the frequency, nature and severity of Beau’s disturbed behaviours, that is entirely unsurprising. The first step towards allowing Beau to engage with the curriculum was management of his behaviour. Without management of his behaviour, Beau could not possibly focus upon formal learning in areas such as reading, writing and mathematics.
3. One of the difficulties with Ms Webb’s report is that she assumes that the only strategies to manage Beau’s behaviours over the time he was at the School were those recorded in the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan. She also wrongly assumes that there was little engagement with Julie Connor about these strategies. However, the adequacy of the 2013 and 2015 Plans cannot be assessed in isolation from the whole range of strategies that the School had used, nor from the nature, frequency, severity and consequences of Beau’s disturbed behaviours.
4. The staff at the School went to considerable efforts to find, develop and adapt strategies that would both manage Beau’s behaviour and engage him in learning. For example, in 2011, Beau’s teachers adopted a strategy of persevering through Beau’s outbursts in order to set boundaries so that Beau knew he would not always be sent home if he misbehaved, together with positive reinforcement of good behaviour. Ms McNamara would specifically meet with Beau to offer positive reinforcement. Those strategies appeared to be effective for a time.
5. Julie Connor was consulted about plans for the management of Beau’s behaviour. This included Ms Schloss and Ms McNamara conducting a Functional Behaviour Assessment interview with her on 7 April 2011, which was then provided to Ms Cooper. Ms Cooper then observed Beau in the classroom on 20 June 2011 and provided strategies to his teacher. Ms Cooper provided continuing support during 2011. Ms Schloss provided information to Beau’s paediatrician to assist in his diagnosis and treatment.
6. In 2012, the strategies included Ms Bradford holding Beau in a bear hug, with Julie Connor’s approval, to allow her to leave. This was successful, as Beau would settle down after a few minutes, and he would then be able to remain at School for the rest of the day, although Beau’s behaviour deteriorated significantly in Term 4. On each occasion when Beau’s behaviour was documented in the OneSchool records, the teacher also documented the strategies that had been taken to attempt to manage Beau’s behaviour. For example, on 12 October 2012, the strategies were recorded as:

Eye contact ESCM, Verbal cues/instruction ESCM, Redirection to appropriate behaviour, Individual close talk, Give choice/warning ESCM

On many occasions, the strategies employed by the teachers allowed Beau to settle down enough that he could remain in the classroom, rather than his parents being called to pick him up early or being removed from the classroom. However, when Beau’s behaviour could not be adequately managed, his parents were called or he was removed.

1. One of the strategies used was that for a period in 2012, Peter Connor would attend the classroom with Beau for a period of time. Julie Connor attended the class with Beau at times in at least 2012 and 2013.
2. In 2013, Ms Cooper and Ms Schloss developed the Class Behaviour Management Plan. The Plan indicated that its goals were for Beau to engage in learning in a compliant manner, interact appropriately and communicate how he was feeling. The Plan included classroom expectations and strategies including praise, positive reinforcement and rewards. It also included strategies for dealing with minor incidents and major incidents. Ms Webb’s criticisms tend to focus upon the strategies to deal with Beau’s behaviours when they became unsafe or unmanageable. They do not pay appropriate regard to the strategies that were designed to keep him in the classroom and encourage him to engage with the curriculum, and to the fact that withdrawal from the classroom was the last resort.
3. Also in 2013, Ms Brookes, Beau’s teacher, had many discussions with Julie Connor about management of Beau’s behaviour. It is true that there were few discussions, if any, with Peter Connor, but, as he said in his evidence, he was very busy with his work. It is evident that within the Connor family, Julie Connor undertook the vast bulk of the liaison with the School. Some passages from the evidence of Ms Brookes demonstrate the lengths she went to assist Beau and engage with Julie:

Beau was a very difficult child in the classroom. He was extremely disruptive. I believe that, as an educator and as his classroom teacher – that I met his needs the best way that I knew how. And I also followed the practices that were encouraged by the administration team. Within my classroom environment, Beau was given every opportunity to learn. And I modified his tasks continually. I gave him one-on-one attention constantly. Yet I do firmly believe that all the children in the classroom should be allowed to learn. And unfortunately there were times when Beau was in the classroom and he made it very, very difficult for others to learn.

…

Yes, I spent hours – in the morning before school with his mother, when she would drop him off, and then in the afternoons there would be hours we would stand on the outside stairs of my classroom and I would talk and talk and talk to her while the children would play or they would vie for her attention or my attention. And we would talk about parenting strategies. We would talk about things that were happening in the home. We would talk about the stresses that she had. Not everything was documented in OneSchool. I believe in making a rapport – a rapport with that family so that I can meet the needs of that child. But you know – and I did spend that whole year building that rapport.

But there were times in my classroom where I would have that little boy running around the classroom and, you know, he would go to water taps at the front of the classroom – I had containers filled with water for filling up drink bottles – and he would literally just stand there and turn them on. And he would look at me and wait for me to react. I didn’t react. I would end up with a classroom full of water and I would just let it happen. I would sit there and have my cup of tea. And I would say to him, “When you are ready to come and sit down and talk to me about what is wrong with you, then I am ready to have that discussion.” I did try very hard. But whatever was going on impacted him significantly within the house – within the classroom.

…

So when Julie would turn up with Beau, if she was there early enough, then I would stop and speak to her, because most days, she would hang around, wanting me to. There was – not uncommon for me to put the class on task in the mornings in order to speak to her privately outside so that I could set Beau up for the day and have an understanding of what – what I needed to do in order to meet his needs. So her coming in in the mornings was not always just before school. It was likely that it would carry over. The bulk of the time was in the afternoons after school, so obviously, all of the children are relieved from the classroom at 3 o’clock and I would then – when she would come to collect him, we would stop and speak. And when I say “hours”, it’s an accumulation across a week. We would be talking about at least an hour every day. So she would be hanging around until close on 4 o’clock and we would have a chat about what was going on.

1. Later in 2013, Beau entered a flexible arrangement which reduced his hours of attendance at the School. From early 2014, he also attended the Hervey Bay Positive Learning Centre two days a week, while attending the School on the other three days.
2. In 2014, the strategies included Beau spending part of his school days in the Special Education Unit. That followed a meeting between Ms Christie, Ms Jensen and Julie Connor. Beau was referred to the Bay Safety Mates Program, with Julie Connor’s consent.
3. The Individual Behaviour Support Plans for Beau dated 6 February and 29 April 2014 were developed by Ms English, the Head of the Special Education Unit, in consultation with Beau’s classroom teachers and other staff. The triggers for Beau’s behaviour were noted to be hard to define, but included writing, events at home, being touched, authority figures (especially women), lack of food, wanting to be at home and work avoidance. A hypothesis was stated that Beau engages in behaviour aimed at meeting his needs, such as work avoidance or time at home. The Individual Behaviour Support Plans listed proactive strategies and reactive strategies. Proactive strategies included planning for Beau to take part in a gardening program, modification of subjects, Beau’s mother attending class for an hour a day, using a timer, relationship building, positive reinforcement and rewards. The reactive strategies included plans to deal with minor or moderate behaviours, as well as an Escalated Behaviour Plan, which included Beau being removed from the class and being placed in the Withdrawal Room until he was calm enough to return to class, or if he did not settle down, to be taken home by his mother. I accept that Julie Connor agreed to the Plan dated 6 February 2014, although a signed copy is not available. She indicated her agreement to the 29 April 2014 Plan by signing it. I reject her assertion that she was unaware of the use of the Withdrawal Room.
4. Again, Ms Webb focusses upon the Escalated Behaviour part of the Plans, without paying appropriate regard to the strategies designed to keep Beau in the classroom and to allow him to engage with the curriculum.
5. In 2015, Beau’s time was divided between the Special Education Program and his mainstream class. The curriculum was modified for Beau so that he worked to a Grade 1/2 level. Beau was able to be provided with more individualised support in the Special Education Program, through one-on-one teaching and teaching in small groups.
6. The Individual Behaviour Support Plan dated 13 February 2015 made changes to the proactive/reactive strategies. Beau was offered work in the garden. He was offered social skills lessons in the SEP and was seated with students he liked. There were strategies engaged including positive input from staff, rewards and time on the computer. The Escalated Behaviour Plan included, but did not necessarily require, Beau to be removed from the classroom and placed in the Withdrawal Room when aggressive. He was to be permitted to return to the classroom if he calmed down within 40 minutes. There was a meeting between Ms English, Ms Clarry, Ms Green and Julie Connor to discuss the Individual Behaviour Support Plan. Julie Connor agreed to the Plan, as is indicated by her signature on the document.
7. I find that Beau’s parents, particularly Julie Connor, were engaged in the development of strategies to both manage Beau’s behaviour and engage him in learning. This both occurred through formal and informal meetings.
8. Beau’s teachers had their own documented and undocumented plans for Beau and other students. For example, in 2012, Ms Jensen developed written strategies for Beau which included: ensuring she had Beau’s attention before speaking; asking simple questions; providing cues and prompts; providing feedback during independent work; breaking up work into small step-by-step tasks; negotiating how much work was to be completed; and reducing the amount of spelling or giving alternative spelling words. In 2014, Ms Brookes wrote a detailed note for support staff which, inter alia, outlined Beau’s strengths and weaknesses, interests, triggers, interventions, rewards and requirements. In 2015, Ms Green prepared a detailed list of Beau’s likes and dislikes and teaching and behavioural strategies to apply, but she gave evidence that she also adopted undocumented strategies such as non-verbal cues, one-on-one time and tactical ignoring.
9. I reject Ms Webb’s opinion that there was no Functional Behaviour Analysis conducted to identify the triggers leading to problematic behaviours. She was unaware that a Functional Behaviour Assessment was carried out in 2011. Further, Beau’s teachers and other staff were acutely interested in identifying the triggers for Beau’s behaviours, as is indicated by, inter alia, the 2013 Class Behaviour Management Plan and the 2014 and 2015 Individual Behaviour Support Plans. They engaged formally and informally with Julie Connor in trying to identify triggers for, and strategies to deal with, Beau’s behaviours.
10. Ms Webb criticises the hypothesis found in the Individual Behaviour Support Plans that Beau wanted to avoid work and be sent home on the basis that it suggested that the School did not have an understanding of the purpose or function of his behaviours, and shows that the School placed the problem with the child. However, the hypothesis was a reasonable one, based, as it was, on Julie Connor’s views and the observations of his teachers. At times, Beau seemed to be able to control his behaviour to the extent that he would calm down when his parents came to pick him up from the School.
11. Ms Webb offers the criticism that, while Beau wanted to be liked by others and have social connectedness, he was placed in a situation where he was seen as devalued and problematic by his peers. However, that view fails to recognise that Beau was only physically restrained or secluded when his behaviours, which included punching and kicking his peers at times, had escalated to a point where they had overtaken any desire he had to be liked or for social connectedness.
12. The evidence demonstrates that the School was aware of and developed strategies to deal with Beau’s sensory processing difficulties. For example, fidget toys were available to him and teachers would look him in the eye and use non-verbal cues. The strategies included attempting to engage Beau’s interests, such as gardening, timber model constructions and time on the computer. While Ms Webb suggests that Beau should have been allowed to climb trees, that was plainly not feasible because of the physical dangers involved.
13. I reject Ms Webb’s opinion that there is little evidence of curriculum modifications and adaptations to allow Beau full access to learning opportunities. The Individual Behaviour Support Plans and other strategies, including time at the Special Education Unit and the provision of teacher-aides for Beau indicate the contrary. The curriculum was modified for Beau in the Special Education Unit.
14. I reject Ms Webb’s opinion that the School used punitive strategies against Beau by locking him in a room. The Withdrawal Room was used as a last resort. It was used when no other methods had worked for Beau to calm down and only when he posed a risk of injury to himself or others. It was used to give Beau an opportunity to calm down to the stage where he could return to the class, rather than facing his parents being called to take him home and the risk of suspension. On a number of occasions, the strategy worked and Beau was able to return to the class. On other occasions it failed. The fact that it failed on occasions does not mean that it was an unreasonable or unwise strategy, given that the alternative was to physically restrain Beau until his parents could come in to collect him. He could not simply be left unrestrained or unconfined when he lost control because of the danger involved in Beau running away or engaging in other dangerous acts.
15. It was suggested that locking the door of the Withdrawal Room indicated that the room was used as a form of punishment, but I do not accept that. It was a safety measure to avoid the risk involved with Beau repeatedly opening and slamming the door shut. Whenever Beau was in the Withdrawal Room, he was observed by staff through the glass pane in the door. Staff could intervene when he failed to calm down or engaged in dangerous behaviour in the room. The use of the Withdrawal Room was protective of Beau rather than punitive.
16. I reject the suggestion that the Withdrawal Room was kept in darkness as a form of punishment. I accept that the light was kept somewhat dim as a calming measure, but it was not dark.
17. Ms Webb suggests that the use of the Withdrawal Room was itself a trigger for Beau’s behaviours. On each occasion when Beau was taken to the Withdrawal Room he was already displaying significantly disturbed behaviours. On some occasions, he calmed down when he was in the room. The evidence does not support Ms Webb’s suggestion.
18. Importantly, Ms Webb was unaware of the nature, frequency and severity of the behaviours engaged in by Beau. Without being aware of these matters, she was not in any adequate position to judge the appropriateness of the behaviour management plans developed by the School. Nor was she in any position to suggest what alternative strategies, if any, might have been effective given the actual circumstances facing the staff. Ms Webb’s evidence smacks of a theoretical, academic analysis without adequate regard to the particular circumstances facing the School and its staff.
19. Ms Webb states that the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan showed little or no evidence of preventative, adaptive or reactive strategies that the School could use to support Beau. That is plainly wrong, as may be seen by simply reading those plans and the Individual Behaviour Support Plans implemented by the School.
20. In my opinion, the various criticisms made by Ms Webb of the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan are unfounded. The statement of claim defines a Functional Behaviour Assessment in the way summarised at [298]. I am satisfied that the 2013 Class Behaviour Management Plan and the 2014 and 2015 Individual Behaviour Support Plans, informed by and taken in conjunction with all the other strategies and investigations undertaken, met that description. The statement of claim alleges that a Functional Behavioural Assessment is required to be provided by someone qualified to undertake such an assessment. I am satisfied that the staff at the School, together with Ms Cooper, as educators with practical experience (particularly given their knowledge and observations of Beau), were appropriately qualified.
21. The statement of claim alleges that the School failed to provide Beau with the reasonable adjustment of a Functional Behaviour Assessment and Behaviour Plan. I am not satisfied that they were not provided. Further, to the extent that the statement of claim alleges that the State failed to provide Beau with an adequate or suitableFunctional Behaviour Assessment and Behaviour Plan, I am not satisfied of that matter.
22. Further, for the purpose of s 5(2) of the DDA, it is necessary for the applicant to show that the failure to provide reasonable adjustments had the effect that the applicant was, because of his or her disabilities, treated less favourably than persons without those disabilities would be treated in circumstances that are not materially different. It may be noted that in *Kiefel v State of Victoria* [2013] FCA 1398, Tracey J dealt with similar factual circumstances and said at [91]–[92]:

91 There can be no doubt that behaviour management plans of varying forms were prepared by and implemented in the three schools which James attended prior to August 2009. What was put in issue by James was the *effectiveness* of the various plans. Even if it be assumed in his favour that offending conduct can be identified in this way (a matter to which I will return in the context of his indirect discrimination claims), direct discrimination can only be found if James established that the shortcomings of the plans which were adopted can be attributed to his disabilities.

92 The plans, such as they were, were adopted in order to deal with James’ disabilities. Any deficiencies in those plans (if there be any) were caused by errors of judgment or inadequacy of resources or other causes unrelated to his disability. James failed to establish that the deficiencies about which he complained occurred *because* of his disabilities.

1. I respectfully adopt and apply Tracey J’s reasoning. Any deficiencies in the Functional Behaviour Assessments and Behaviour Plans were caused by errors of judgment, or inadequacy of resources, or other causes unrelated to Beau’s disability. Accordingly, the Third Allegation cannot succeed.

### The Disability Standards for Education 2005

1. The statement of claim does not plead that the State did not comply with the *Disability Standards for Education 2005* (**the Standards**). The State pleads a defence under s 34 of the DDA that it complied with the Standards. The State’s submission on this issue is limited to a single sentence simply asserting that it did so comply. In view of the inadequacy of the State’s submission, I do not propose to consider this aspect of the State’s defence.
2. However, I will consider whether the applicant has established any contravention of the Standards, even though that issue was not pleaded. That is because Ms Webb’s report, which was admitted into evidence without objection, does provide a critique of whether the State complied with the Standards. I will consider this issue briefly since I have already indicated my reasons for rejecting almost every aspect of Ms Webb’s evidence.
3. Parts 4 to 8 of the Standards specifies how education and training are to be made accessible to students with disabilities in: enrolment; participation; curriculum development, accreditation and delivery; student support services; and elimination of harassment and victimisation. Parts 1 to 3 are largely definitional.
4. Part 5 deals with standards for participation. Clause 5.2(1) provides that an education provider must take reasonable steps to ensure that the student is able to participate in the courses or programs provided, and use the facilities and services provided by it, on the same basis as a student without a disability, and without experiencing discrimination. Clause 5.2(2) requires, relevantly, consultation with an associate of the student, a decision as to whether adjustments are necessary and the making of reasonable adjustments in accordance with Part 3.
5. Ms Webb seems to assert that cl 5 was contravened because Beau was locked in a room and because the adjustments in the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan suggest that Beau was not actively participating in all aspects of school life. Further, there were few measures to ensure Beau had the opportunity to participate in class. In addition, she says there were few measures such as flexibility and adjusting activities to enable Beau to obtain the benefits of education at the School. I reject these criticisms for reasons I have already given.
6. Part 6 deals with standards for curriculum development, accreditation and delivery. Clause 6.2(1) requires an education provider to take reasonable steps to ensure that a course or program is designed in such a way that the student is able to participate in the learning experiences of the course or program on the same basis as a student without a disability, and without experiencing discrimination.
7. Ms Webb asserts that cl 6 was not complied with because the 2013 Class Behaviour Management Plan and the 2015 Individual Curriculum Plan show the focus of the intervention was around Beau complying with staff, when it should have been around working collaboratively with families to develop a plan to meet individual needs. She says there was little evidence of adjustments or modifications applied to Beau’s learning and that he was excluded through being locked in a room and suspensions. She says that Beau’s family was not consulted about modifications of the curriculum. I have already rejected these criticisms.
8. Part 7 of the Standards deals with standards for student support services. Clause 7.2(1) provides that an education provider must take reasonable steps to ensure that the student is able to use support services used by the students of the institution in general on the same basis as a student without a disability, and without experiencing discrimination.
9. Ms Webb asserts that the School failed to comply with cl 7.2(1) by removing him from the learning environment, restraining him in a room and with bear hugs and not using appropriate support methods. I have already rejected these criticisms.
10. Part 8 of the Standards deals with standards for harassment and victimisation. Clause 8.3(1) provides that an education provider must develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability in relation to the disability.
11. Ms Webb alleges that cl 8.3 was breached because Beau was harassed by being put in the Withdrawal Room and sent home, and that the School did not provide an inclusive learning environment/support. I reject these allegations for reasons I have already given.
12. Ms Webb also seems to raise an assertion that when Julie Connor was (accidently) locked in the Withdrawal Room, it constituted a contravention of the Standards. That cannot be accepted.
13. I reject the assertions made in Ms Webb’s report that the State contravened the Standards.

## Damages

1. It would usually be appropriate to undertake an assessment of damages upon the premise that I may be wrong in my conclusion that the State did not contravene the DDA. In this case, it is not practicable to undertake such an assessment.
2. There are some 58 separate allegations of discrimination in respect of the formal and informal suspensions and applications of physical restraint and seclusion. It would be unrealistic to proceed to assess damages on the basis that every allegation succeeds, and it is not practicable to assess damages on some other basis.
3. In these circumstances, I consider that it is too impractical and artificial to attempt any quantification of damages.

## Conclusion

1. The statement of claim makes three allegations that the State discriminated against Beau Connor because of his disability contrary to s 22(2)(a) and (c) of the DDA. For the reasons that I have given, each of those allegations must be rejected.
2. The proceeding must be dismissed. The usual course is that costs should follow the event. In a case where an applicant has sued by a litigation guardian and fails, the usual order is that the litigation guardian pay the respondent’s costs. I see no reason to depart from the usual course. I will order that Peter Connor pay the State’s costs of the proceeding.

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| I certify that the preceding three hundred and fifty-five (355) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rangiah. |

Associate:

Dated: 9 April 2020