



HIGH COURT OF AUSTRALIA

Public Information Officer

11 November, 2003

ALEXANDER PURVIS on behalf of DANIEL HOGGAN v THE STATE OF NEW SOUTH WALES (DEPARTMENT OF EDUCATION AND TRAINING AND THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION)

The High Court of Australia today dismissed an appeal from the foster father of a boy expelled from South Grafton High School for violent behaviour towards teachers and fellow students.

Daniel, now 18, attended the school from April to September 1997 and was suspended five times and finally expelled for repeated kicking, punching and swearing.

Daniel, born on December 8, 1984, suffered encephalopathic illness at six months of age which left him with brain damage, intellectual disabilities, sight problems and epilepsy. He had difficulty communicating which led to frustration and behavioural problems, including offensive language, lack of self-control and violence.

In 1996, his foster parents sought to have Daniel enrolled at South Grafton High School for the 1997 school year. A teacher's aide and a casual teacher were engaged to assist Daniel. After the fifth suspension, the principal recommended that he be taught at home, apart from sport and school excursions, or be transferred to the Special Unit at Grafton High School. He cited his responsibility for the welfare and safety of other students and staff as his reason for his decision ultimately to expel Daniel.

Mr Purvis complained to HREOC that Daniel had been discriminated against by the State of NSW, alleged that Daniel had been suspended, and later excluded, and been subjected to various detriments in his education, on the ground of his disability, in contravention of the federal Disability Discrimination Act. HREOC Commissioner Graeme Innes found that the State had discriminated against Daniel on the grounds of his disability and ordered the State to pay \$49,000 in compensation. The State sought judicial review in the Federal Court of Australia, which set aside Mr Innes's decision. The Full Court of the Federal Court unanimously dismissed Mr Purvis's appeal and he appealed to the High Court.

The Court, by a 5-2 majority, dismissed the appeal. It held that the principal had not discriminated against Daniel on the ground of his disability.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*