



Legal issues bulletin

Number 33 reviewed July 2012

Good practice when conducting difficult interviews and related issues

The following advice is intended to help staff to deal with a range of situations involving interaction with members of the public. The strategies suggested here are based on the department's experience of legal cases that have arisen out of difficult encounters. Our experience suggests that the application of good practice will diminish the likelihood of litigation.

Legal Services is grateful for the assistance provided by Stephen Allnutt and Kevin Corcoran of Threat Management Solutions Pty Ltd in the development of this bulletin.

What factors should be taken into account when conducting any interview?

Staff, particularly principals, often interview parents, caregivers, other staff and students. Any staff member who conducts an interview for any reason should ensure that –

- If possible, the interview is conducted in a confidential environment;
- The issues are fully understood prior to the interview and that sufficient time has been allowed so that the interview does not need to be rushed;
- He or she remains at all times polite and attentive;
- The person being interviewed is given a proper opportunity to present his or her side of the story in accordance with the principles of procedural fairness;
- Any decision is based on the merits of the specific situation;
- Any information provided to the person being interviewed is communicated in a way that can be readily understood and that an interpreter is used where appropriate;
- The interviewee has a support person present if he or she requests one to be present or the circumstances dictate that the person should be provided with an opportunity to have a support person present (e.g. a policy requirement);
- Any relevant policy and legal requirements are complied with.

If I am to conduct an interview that I anticipate will be difficult, are there any additional specific strategies I need to consider implementing?

Occasionally interviews will be difficult because they involve sensitive issues or because people are in an emotional, agitated or angry state. When conducting difficult interviews, a number of different strategies can be implemented to minimise the risk of further problems arising after the interview. Depending on the circumstances, consideration can be given to any or all of the following –

- Arrange for another member of staff to attend the interview for the purpose of taking notes. When conducting interviews about complex issues or with people who are agitated or otherwise emotional, it is difficult to take notes and at the same time devote proper attention to the interview itself. While any notes taken do not need to be a verbatim record, they should reflect the major points raised during the course of the interview;

- At the conclusion of the interview, read back through the notes taken and invite the parties to suggest any amendments which might more accurately reflect what has been said;
- Once the contents are agreed to by all parties, invite all relevant people to sign the notes indicating they agree that the notes represent an accurate summary of what has been said at the interview. If people decline to either sign the notes or acknowledge their accuracy, this should be recorded. A copy should then be given to the relevant people;
- If it is not practicable to read over the notes at the conclusion of the interview, arrange for a typed summary of the main points arising from the interview to be provided to relevant people at a later date;
- When sending a copy of any summary of the main points, include a covering letter which -
 - invites the person to suggest any amendments to the summary that more accurately reflect what he or she believes was said at the interview;
 - subject to any possible amendments to the summary, requests the person to return a formal acknowledgement indicating that he or she has received the notes and agrees with their contents;
 - indicates that in the absence of any signed acknowledgement being received, it will be taken there is no objection to the contents of the summary.

When providing copies of summaries to people, principals should ensure they are personally delivered, sent by certified mail, e-mailed or faxed rather than sent by ordinary post so that there is a record of delivery.

Copies of all relevant documents, including any original notes taken, should be retained. When making notes of any meeting held, staff should remember that the notes will be regarded as departmental records and may be accessible to people under the Government Information (Public Access) Act 2009.

What should I do if the person I am interviewing becomes overly emotional, abusive or threatening during the course of the interview?

If people become agitated and emotional during the course of an interview, staff should remain calm at all times and adopt a reasonably flexible and, if need be, assertive (but not aggressive) approach.

Avoid taking a defensive stance. It is better to acknowledge that you perceive the person's distress and respect for his or her concerns.

The department does not, however, expect its staff to accept any abusive or indecent language, threats, menacing behaviour, or threats of physical violence or actual physical violence.

If this happens, the person should be politely told the behaviour is unacceptable and requested not to behave in that way. If a person attending an interview continues to behave in an unacceptable manner after being requested not to do so, the interviewer should politely terminate the interview. Depending on the circumstances, it may be helpful to minimise the tension by suggesting another meeting at another time.

If any threat persists the person should be asked to leave the premises. If possible, this should preferably occur when other staff are present.

In such circumstances you should act in accordance with your misgivings. Sometimes in situations provoking fear people will notice the "hair on the back of their head standing up" or a "shiver down their spines". These are important physiological warnings and should be acted upon. That is, if you feel this happening, get out of the situation, despite any concern that it may be perceived as impolite.

In relation to students, further action in accordance with the relevant student discipline policy may be appropriate.

If I have good reason to believe a person I have arranged to interview may act in an aggressive or otherwise unacceptable manner, what strategies should I consider?

If it is anticipated that an interview may result in a person behaving in an unacceptable manner, one or more of the following strategies can be implemented prior to and/or during the interview –

- Advise other staff in the nearby area that the interview is to take place;
- If applicable, advise security staff and have them discreetly available in advance;
- Have another staff member attend the interview as a note taker or observer;
- Leave the door open if the interview is taking place in an office (after considering whether the need to do so outweighs any need for the interview to be confidential);

- Organise the seating arrangements so that a maximum distance is maintained between the person and any staff members. Ensure that both the interviewer and the person being interviewed have access to the door or an exit;
- Remove any obvious articles that could be used as weapons;
- Advise the person prior to the interview that inappropriate language or behaviour will not be tolerated and that any such language or behaviour will result in the interview being terminated.

In any interview with persons who are not behaving calmly or rationally, it is crucial that staff do not allow themselves to engage in any verbal or physical fights. Staff should at all times maintain a professional and non-aggressive approach when dealing with such persons. It is also important to avoid using any confrontational body language. In particular –

- To appear less confrontational, if possible, arrange the seating to be at an angle rather than directly face to face;
- Sit back and avoid leaning forward;
- Always speak in a slow, calm and deliberate voice and let the person speak first, inviting them to express their point of view on the matter.

If you have genuine reasons to consider that the person will not just exhibit unacceptable behaviour, but behave in a dangerous manner, you should not conduct the interview but contact the department's Safety and Security directorate, Work Health and Safety directorate or Legal Services for advice and assistance.

What steps should I take if I am required to terminate an interview and the person I am interviewing refuses to leave?

If it is necessary to terminate an interview and the person refuses to leave, he or she should be advised that failure to leave may result in police or security being called. Except in cases of actual or threatened physical violence, any decision to call police or security should be a last resort. For the procedures on how to deal with such issues, staff should refer to [legal issues bulletin 58 – Unauthorised Entry onto departmental Premises - Update – Inclosed Lands Act](#).

What is the role of a support person in any interview?

Steps should also be taken prior to any meeting to clarify the role of any support person who attends with the interviewee. The role of a support person is not to act as an advocate for the interviewee or to become actively involved in any discussion which may take place. The form of support and assistance may vary according to the circumstances and could include the taking of notes, provision of advice on rights, suggesting a temporary pause in a meeting or suggesting seeking further advice.

A support person should also be mindful of any potential conflict of interest that may arise and should not accept the role if such a conflict does arise. For example, such a conflict might arise, depending on the issue, if the support person is a staff member.

Principals should also give due consideration as to whether an interpreter will be required to enable the interview to be successfully undertaken.

Can a person have a solicitor as their support person?

Yes provided they act as a support person and not an advocate. The mere fact a proposed support person is a solicitor or otherwise legally qualified does not prevent him or her undertaking the role. As with all support persons, the precise nature of their role should be clarified prior to the commencement of any interview.

How do I deal with people who constantly send correspondence and or make inquiries at my school?

Principals may be required to deal with people who persistently write letters, send emails, telephone or ask for information from the school. **Persons affected by decisions made by schools have a right to discuss or complain about those decisions. Similarly, people also have a right to seek clarification of, confirmation of and reasons for decisions made.**

However, there may be times when a person, through continuous letter writing, emails, telephone conversations or personal contact, will continue to make unreasonable demands on time and resources about a particular issue or issues.

Depending on the circumstances, principals may consider any or all of the following strategies to deal with this situation. **Note however that in relation to the first and second strategies, principals must also consult with and obtain approval from the school education director.**

- Notify the person that only new issues will be addressed in any future correspondence or conversations;
- Advise the person that no further correspondence or conversations will occur in respect of the issue and that any further correspondence received from the person will be noted and placed on file;
- Require an appointment to be made prior to entering into any discussions about any issue;
- If the person is making regular telephone or personal contact, insist that any future contact be in writing.
- If the person is contacting a wide range of people in the school about the same issue, inform the person that one nominated member of staff will deal with the issue;
- Similarly, if correspondence is continually being sent to a particular person in a harassing fashion, it may be appropriate to refer the correspondence to a more senior person, preferably someone with whom the correspondent has not had prior contact.

The adoption of any of the above strategies must only occur after attempts to otherwise resolve the issue have failed. Care should be taken to ensure that if such a policy is adopted, it only relates to existing issues. **A blanket policy of not dealing with a person, no matter what issue they raise, should not be adopted.**

If a decision is made to terminate any future contact with a person and the person continues to disregard any advice about that decision, principals may contact the department's Legal Services to discuss what further action, if any, may be taken to resolve the issue.

About Legal Services

Legal Services is here to support our government schools. **Staff can contact Legal Services by email or phone.**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.