

Harshman is a 13 year old student in Year 7 at a public school. He has autism, ADHD, ODD and anxiety, and has a behavioural management plan in place. Due to his disabilities, he often acts out in a joking manner, including swearing, and he can lash out physically when distressed, which is why his behavioural management plan focuses on ways to calm him down. The school follows a strict discipline policy for anything that is seen as misbehaviour, any student who swears or engages in any physical altercation is automatically suspended for two days, and longer suspensions occur for each new breach of behaviour.

Harshman experienced increasingly long suspensions throughout year 7 for minor incidents of physical altercation with other students as a result of bullying, firstly for 2 days, then 4 days, then 5 days, culminating in a 20 day suspension for appearing to threaten a teacher. The teacher and other students interpreted this as clowning around rather than a genuine threat and the situation was quickly defused. The incident was not even mentioned by his teacher to his parents until the suspension occurred some days later.

His mother repeatedly requested that the policy be amended to consider Harshman's disability, and institute alternative forms of discipline in accordance with his behavioural management plan. The School did not do so, and after the last long suspension, Harshman was again found to be misbehaving and was threatened with expulsion.

Midlas wrote a letter of advice to Harshman's mother noting that there was a strong case of indirect discrimination in the School's treatment of Harshman in relation to the discipline policy, in that he could not comply with the discipline policy because of his disabilities, and the School had failed to make reasonable adjustments which would accommodate his disabilities. Midlas explained the process and options for making a discrimination complaint, as well as providing referrals for assistance with challenging the procedural decision to expel him on other grounds. Harshman's mother said that she found the advice very helpful and allowed her to consider all her options clearly.