

THE EQUALITY TRIBUNAL

EQUAL STATUS ACTS 2000-2011

Decision DEC–S2014–002

PARTIES

Mr A (on behalf of his daughter)

and

Board of Management of a Community School

File References: ES/2012/0048
Date of Issue: 10 February 2014

Keywords: Conditions of participating in education – discrimination - disability

1. Claim

- 1.1. The case concerns a claim by Mr A that the Board of Management of a Community School discriminated against his daughter (hereinafter the complainant) on the grounds her disability contrary to Section 3(2)(g) of the Equal Status Acts 2000 to 2011.
- 1.2. The complaint was referred under the Equal Status Acts 2000 to 2011 to the Director of the Equality Tribunal on 27 April 2012. On 11 September 2013, in accordance with his powers under S. 75 of the Employment Equality Acts and under the Equal Status Acts, the Director delegated the case to me, Hugh Lonsdale, Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under Part III of the Acts. On this date my investigation commenced. Submissions were received from both parties and, as required by Section 25(1) of the Equal Status Acts and as part of my investigation, I proceeded to hold a joint hearing of the case on 13 November 2013.

2. Complainant's Submission

- 2.1. The complainant submits that she has Asperger's Syndrome, which is an Autistic Spectrum Disorder and suffers from ADHD.
- 2.2. The complainant submits that there was an incident on 3 February 2011 involving herself and two other pupils. The complainant was suspended indefinitely from the school. The suspension lasted for seven weeks. No action was taken against the other two students involved. The investigation into the incident did not involve the complainant's parents, and did not include a statement from the complainant. The complainant was not told how that decision could be appealed. Subsequently the suspension was appealed and overturned by the Department of Education and Science in May 2011.
- 2.3. The complainant submits the respondent took no account of her condition and refers to a letter of 17 February 2011 from a clinical psychologist to a principal social worker which states that his daughter would be prone to bullying due to her social skills difficulties.
- 2.4. The complainant returned to school in March and interim arrangements were made. She was placed alone in a library, away from the school. This meant she did not mix with other pupils and was isolated.

- 2.5. The complainant submits that when she returned to school after the summer holidays in September 2011 there were issues about the subjects she was allowed to take. She was assigned classes for four hours per day on four days per week and she was sent home when she had no lesson, even when there were only short gaps between lessons. There were incidents because of her disability and they were asked to take her out of school on a number of occasions.
- 2.6. The complainant states the recommendations of a National Educational Psychologist were not put into effect.
- 2.7. From September until December 2011 the complainant's parents had four meetings with the deputy head, the year head and the special needs co-ordinator. The parents tried to have the Special Needs Assistant (SNA) removed from the classroom as this was acting as a trigger to the complainant but Mr A submits the school said the SNA was there to stop their daughter from distracting the teacher. The last meeting included a social worker, a child protection social worker and the Special Needs Officer for the county but the parents were not happy with the provisions being made for their daughter and said they would take their daughter out of school. The complainant was removed from the school in November 2011.
- 2.8. After a long discussion with their GP and a psychologist the parents decided it would be better for their daughter if she did not return to school.

3. Respondent's Submission

- 3.1. The respondent submits that the 3 February 2011 incident was serious and their investigations showed that the complainant had attacked and repeatedly threatened another student and was suspended by a decision of the Board of Management made the following day.
- 3.2. On 16 February 2011 the Principal wrote to the complainant's parents stating the reasons for the suspension. He also confirmed that the SENO, EWO, school psychiatrist and the HSE had been informed of the incident and no decision would be made about her return to school until a meeting was held with all interested parties.
- 3.3. On 12 April 2011 the Principal wrote to the parents again confirming that an investigation into the incident had been carried out, that a number of meetings had been held and that the 1:1 tuition she was receiving was enhancing the daughter's academic work.

- 3.4. The respondent submits that the school made many efforts to re-integrate the complainant into school until December 2011 when the parents decided she would not be returning.

4. Findings and Conclusions of the Equality Officer

- 4.1. The issue for decision in this case is whether the complainant was discriminated against by the respondent in relation to her disability within the meaning of the Acts. In coming to my decision, I have considered all oral and written evidence presented to me by the parties.
- 4.2. At the hearing Mr A described his daughter's condition and stated that the school were aware of this at all times. In direct evidence it was clear that the school were aware of the daughter's condition and referred to the efforts they had taken to make the necessary arrangements to try and avoid situations which triggered strong reactions from the complainant and to cope with her subsequent disruptive behaviour. In assessing the evidence given I am satisfied that the daughter has a disability within the meaning of section 2 (1) of the Equal Status Acts.
- 4.3. There would have been a history of the complainant in the school but this claim starts from the incident on 3 February 2011 and is made in relation to the treatment of the complainant over the incident and its aftermath, and her subsequent treatment in returning to school afterwards, until the time her parents decided to permanently remove her from the school in December 2011.
- 4.4. The alleged discrimination falls under section 7 (2) of the Equal Status Acts which states:
- “An educational establishment shall not discriminate in relation to—*
- (a) the admission or the terms or conditions of admission of a person as a student to the establishment,*
- (b) the access of a student to any course, facility or benefit provided by the establishment,*
- (c) any other term or condition of participation in the establishment by a student, or*
- (d) the expulsion of a student from the establishment or any other sanction against the student.”*

and section 3 (1) which states:

For the purposes of this Act, discrimination shall be taken to occur—

(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) (in this Act referred to as the ‘discriminatory grounds’)

In this claim the ground is disability and the complainant must show that she was discriminated against by comparison with someone who had a different disability or who did not have a disability.

- 4.5. The respondent contends that in the incident on 3 February 2011 the complainant threatened to kill another student and had some form of implement in her possession. They state they carried out an investigation which involved those who were present during the incident and decided to suspend the complainant. The complainant's parents were critical of the school in involving the Gardai (who were not aware of the complainant's condition), in not controlling their daughter in the aftermath of the incident, and that the others involved were not sanctioned. They were also upset they were not involved in the investigation and considered the indefinite suspension to be inappropriate.
- 4.6. In a letter to her parents on 16 February 2011 the respondent confirmed that the complainant was suspended because of the threats to the other student and because she failed *‘to respond appropriately to the many staff who tried to help her; her use of foul and abusive language and her repeated running away from staff and others’*. The letter confirmed that a number of specialists involved in the complainant's education had been informed of the incident and that a decision about her return to the school would not be made until a meeting had been held with these parties.
- 4.7. A follow up letter date 12 April 2011 confirmed there had been a number of meetings and that the daughter was receiving 1:1 tuition away from the school since the end of March. The complainant proceeded to take a number of state exams. Following her exams in May the complainant was on summer holidays. No evidence was given by either side of issues arising during this period.
- 4.8. The parents and school staff had meetings on 18 August and 9 September 2011 to discuss the complainant's return to school. An Individual Education Plan was drawn up and she returned to school on 11 September 2011. A memo was sent to all staff outlining that the complainant would be expected to follow the school rules, that her SNA would not be present in the classroom unless she requests it or the teacher deems it necessary, and her resource teacher was the link person. Soon after this issues arose about the wearing of jewellery and use of mobile phone and the disruptive behaviour of the complainant in her

reaction to being asked to comply with the school rules. The school then decided that the SNA needed to be present at all times and a behaviour plan was drawn up for the complainant. This was reviewed on 6 October 2011. There was a further meeting between the school and the complainant's parents on 14 October 2011 when concern was expressed that the complainant had run away from school on a number of occasions and that she had problems with a number of teachers, which was resulting in disruptive behaviour. This was followed by a meeting on 23 November 2011 after incidents involving the complainant on the previous day during a trip. Her mother suggested she keep her daughter home until after the Christmas holidays so that she could be given a chance to calm down. The daughter did not return to school.

- 4.9. The complainant considers that the respondent did not properly take into account her disability in dealing with the incident on 3 February 2011 and her subsequent treatment in planning a return to school and then how she was treated when she returned to school. The respondent contends the school dealt fairly with a serious incident on 3 February and they made considerable efforts to assist the daughter in the education process subsequently. It is clear that the daughter had serious behavioural issues which challenged the school. Unfortunately the main tangible triggers for her behaviour were in trying to get her to comply with the school rules (primarily in relation to the wearing of jewellery and use of mobile phone) and also in her reaction to the Special Needs Assistant being with her, which the school deemed necessary from October 2011 onwards to try and manage her disruptive behaviour.

- 4.10. Section 7 (4) (b) of the Equal Status Acts states:

“Subsection (2) does not apply to the extent that compliance with any of its provisions in relation to a student with a disability would, by virtue of the disability, make impossible, or have a seriously detrimental effect on, the provision by an educational establishment of its services to other students.”

The High Court in *Clare v The Minister for Education and Science*, [2004] IEHC 350, stated: “ *the school was entitled to balance the rights of Richard and the other students in his (intended) class -- such, on the basis that the facts in the correspondence are true, is not discrimination (Section 7(4)(b) of the Act of 2000).*” Taking all the evidence into account I conclude that the respondent had devised an Individual Education Plan for the complainant and were monitoring her progress in discussion with her parents. There were considerable difficulties with the complainant's disruptive behaviour during this period which the school was trying to manage. The respondent was also aware of their duty to

maintain the smooth running of the school whilst attempting to provide an education plan for the complainant. Because of the ongoing issues her parents decided to remove her from the school, initially on a short term basis, which then turned to be permanent. There is no indication that this was the wish of the respondent or that they would not have continued with the complainant's Individual Education Plan.

4.12 This was a very difficult situation however, I find that the respondent can rely on section 7 (4) (b) in that to have dealt with the complainant without due cognisance of the school rules and in accordance with the Individual Education Plan would, in my view, have resulted in "*a seriously detrimental effect on, the provision by an educational establishment of its services to other students.*" I therefore find nothing in the actions of the respondent that can be considered discriminatory.

5. Decision

5.1. Based on all of the foregoing, I find, pursuant to S. 25(4) of the Acts, that the Respondent did not discriminate against the complainant on the ground of disability contrary to Sections 3 and 4 of the Equal Status Acts 2000 to 2011.

Hugh Lonsdale
Equality Officer

10 February 2014