Tribiwnlys Addysg Cymru Education Tribunal for Wales

Decision

Date of Birth:	2015	
Claim of:	The parent	
Against:	The Chair of The Governors at the School	
Date of hearing:	2022	
Persons Present:	Parent	*Parent*
	Parent	*Second Parent*
	RB Representative	*RB Barrister*
	Headteacher	*Headteacher*
	Chair of Governors	*Chair of Governors*
	LA Officer	*Observer*

Introduction

1. This is the decision of the Tribunal in a claim for disability discrimination brought by the Parent on behalf of their Child. It is claimed that there have been ten incidents of disability discrimination at the School by school staff and governors. The Chair of Governors at the school is the respondent Responsible Body in this claim.

2. The Child was born in 2015 and is seven years old. The Child has been diagnosed as having Coffin Siris Syndrome, ARID1B Syndrome, significant learning difficulties in that they have global development delay and receptive and expressive language delays and sensory processing difficulties, epilepsy, he has 'unsafe swallowing' and has asthma. The Child has a gastrostomy and receives all their hydration via the PEG.

3. The Child attended School which is the Responsible Body to the claim. The Child was dual registered and attended another School in order to gain access to social and emotional learning. The Child attends the Specialist School for the remainder of thier education, which is named in their statement of special educational needs. The Child's last date of attending the School was on a date in March 2020. Although it is understood the child is still registered with the School to the present date.

4. By way of background, the Parent made a complaint to the School prior to submitting this claim in November 2020. This was investigated by the School. This investigation was conducted by the Headteacher (who was the school's new Headteacher who started in post in September 2020). A response was provided by the School on a date in November 2020. The governors then considered this complaint on a date in January 2021.

The hearing

5. The tribunal hearing took place over two days in June 2022. It was held remotely and was conducted in both English and Welsh. All parties agreed to it being conducted in a remote format. The tribunal heard from the Parent and the RB Barrister of Counsel who represented the School.

Evidence

6. The parties had prepared a bundle of 431 documents, which the tribunal carefully read. The Claimant submitted further documentation in the form of communication between a learning assistant who had been supporting the Child and the Parent. There was no objection by the School to the admission of these documents. Part of these documents were in Welsh but translated by the School for the tribunal. Both the parties agreed they were content with the translated version of the documents being submitted as evidence. The tribunal also watched a video clip it was provided of the School show performed at Christmas 2019.

7. The tribunal heard oral evidence from the Parent (on behalf of the Claimant), the former deputy head, the headteacher, the chair of governors, the teaching assistant and the teacher. Both parties had an opportunity to ask all witnesses questions.

8. The Parent also helpfully provided written submissions and the RB Barrister on behalf of the School made oral submissions. The tribunal took these into account when forming its decision.

Disability

9. It was agreed by the Responsible Body that the Child was disabled within the meaning of section 6 of the Equality Act 2010 and therefore the tribunal did not consider this point further.

The claims

10. There were ten acts of discrimination complained of. They are factually detailed and span between dates September 2019 to January 2021. They are set out in the table below.

	Allegation	**Date act is said to have occurred**
1	The Child was taken out of registration/assembly because he was disruptive	13/03/20 and on an on-going basis prior to this date

2	Derogatory comments by teacher 'children like the Child'	Autumn term 2019 onwards
3	No end of year report provided for the Child	June/July 2020
4	Not including him in the Christmas show	December 2019
5	No access to HWB during lockdown	March – July 2020
6	Letting the Child's buggy go before the Child was safely secured and not treating this as a safeguarding concern	04/10/2019
7	Lack of dignity and respect by teacher in that they had a conversation in the school office in which they said the Child had 'messed themself' and it wasn't the 'TA's job to clean up'.	Autumn term 2019
8	The Child was not given equal access to food through the PEG system they used as other children were. And that the Teaching Assistant said they did this as a 'favour to mum'.	This occurred in the autumn term 2019
9	The governors pressurised the Parent into meeting to discuss their complaint, including by sending emails late at night	December 2020/January 2021- March 2021
10	The School did not communicate about the Child's return to school after shielding	April 2021

11. At the outset of the hearing the parties helpfully agreed which form of discrimination was being relied upon in respect of each allegation and the below findings follow that agreement.

Act 1: removal from registration/assembly

12. The tribunal found that this claim was not proven.

Removal from assembly

13. This was said to be an act of direct discrimination.

14. In order to claim direct discrimination under section 13 of the Equality Act 2010, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant, in this case the Child.

15. It is alleged that the Child was removed from assembly for being disruptive. The Parent gave evidence that the Child's older sibling had told them about this happening as they had been in assembly when it happened. This was the only evidence in support of this allegation.

16. The tribunal had sight of the Child's timetable which showed that they were not in School during the periods of time when the school held assemblies. This was because the Child was dual registered. During the autumn term in 2019 the Child spent Thursdays and Fridays in the School. Then their registered attendance dropped down to Friday afternoons only. The Parent submitted that it may not have happened in a whole school assembly but another event that was taking place in the assembly hall. However, the tribunal was not provided with any further evidence of when this may have occurred.

17. Although the Child's sibling may have seen the Child taken out of the hall, the tribunal had no detail or when this happened. And the evidence of why this happened was limited to the Parent's second hand report of their Child's account. and we did not consider this sufficient to find that this was proven.

18. Therefore, we did not find these facts proven and did not therefore need to go on to consider whether it was discriminatory.

Removal from registration

19. The allegation is a claim for reasonable adjustments and also a claim under section 15.

20. Section 20 of the Equality Act 2010 requires '*where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage'*. Under section 20 of the Equality Act 2010. Section 20 requires '*where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage'*.

21. Section 15 of the Equality Act 2010 applies when someone is treated unfavourably because of something arising in consequence of their disability. This can be justified if the unfavourable treatment is a proportionate means of achieving a legitimate aim.

22. It was agreed by the Responsible Body that the Child was on occasion removed from their form group during registration. It was said that this was due to the distress they were in when they tried to remove an Ipad from the Child. It was agreed that this was one of the targets as set out in the Child's Individual

Behaviour Plan ('IBP') and the tribunal had sight of the IBP which confirmed this. Although, the Parent said that this target had now been amended upon further advice from a clinical psychologist.

23. Given this evidence we found as fact that the Child was removed from registration on occasion. We were not able to determine what days this happened on as there was no evidence of the same. However, we heard evidence that this was not done frequently and only when 'the Child was only taken out of class if they were upset, angry and/or head-banging and when soothing them in the classroom was not effective'. This accords with the Parent's allegation that was removal from registration 'on occasion'.

24. We accept that the behaviour of the Child, which was a symptom of their distress, that the Ipad was removed from them was something that arose in consequence of the Child's disability. This was stated in evidence by the Teacher and the Parent agreed that the Child became very distressed when the Ipad it was taken away, and so we concluded this was not in fact in dispute.

25. We considered that removal from registration was unfavourable treatment as the Child would not be with their friends and given that they were attending the School to gain social time with their peers.

26. However, we accepted that the School had a legitimate aim in taking this action, namely that it assisted the Child in emotional regulation and helped limit their distress and also that it prevented disruption to the education of the others in the class. We accept these are legitimate aims for a school who has a responsibility to all pupils who attend. We also accepted that removing the Ipad was part of the Child's targets at the time of their attendance at the School and therefore it was understandable for the staff in registration to attempt to enact this to meet the target. On the basis that this did not happen frequently, and the fact it was done in order to meet a target in the Child's IBP we find that this was proportionate. Therefore, we find that the justification defence set out in section 15 was made out by the School and this claim is not found proven.

27. The allegation is that the Child was treated differently from other pupils, in that the Child was removed from registration when others were not. We heard no evidence that there was a policy that was applied to everyone, indeed we understood that the issue was that the Child was being treated differently. Therefore, we concluded that the Child was not put at a disadvantage by a policy, criterion or practise and therefore the claim for reasonable adjustments was not proven.

Act 2: Continuous use of the phrase 'Children like the Child' by the Classroom Teacher after autumn 2019

28. This is an allegation or harassment or direct discrimination. This allegation was not proven.

29. Under section 26 of the Equality Act 2010, harassment occurs when the complainant is treated in such a manner that it has the purpose or effect of (i) violating their dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment.

30. It is alleged that the phrase ‘children like the Child’ was said on numerous occasions by the Classroom Teacher when speaking to the Parent. The Classroom Teacher was not called to give evidence as they were on leave and the School were unwilling to disturb their period of leave. The Parent was categoric in their evidence that this was said to them.

31. It was agreed that the Parent had raised this with the former deputy head and had been asked to speak to staff at the School to ask them to stop using this phrase. It was agreed in evidence that this request took place in autumn 2019 and that the Teacher duly did this although the former deputy head’s account was that no staff they spoke to agreed that they had used this phrase. However, the Parent alleges that the use of the phrase continued after this point.

32. The tribunal considered this matter very carefully given that the Classroom Teacher was not present in order to give any account of what happened.

33. We considered the Parent evidence and the fact that it was agreed that they had raised this matter contemporaneously in the latter part of 2019. However, we considered it significant that this was not part of their initial complaint to the School. This meant that the Classroom Teacher was not asked about this as part of the initial investigation. We found the Parent to be a diligent and responsive individual who was a strong advocate on behalf of their son. We considered that had this phrase been used by the Classroom Teacher continuously then given the offensive the Classroom Teacher felt the Parent would have brought this up in the complaint to the School.

34. Although we have no doubt that the Parent was trying their hardest to assist us in their evidence, with the passage of time the Parent’s recollection of the conversation may have altered in terms of the exact words used, or who said them. We do not therefore find on the balance of probabilities, that the factual part of this allegation is found proven. Therefore we did not go on to consider whether it was discriminatory.

<u>Act 3: No end of year report</u>

35. This was an allegation of direct discrimination. The allegation was found proven.

36. It is conceded by the School that no end of year report was provided and that it should have been. The Classroom Teacher sent a paragraph to the Child’s other School to be included in their report. However for some reason we are unaware of why this was not actioned. It was further conceded that this was as a consequence of something related to the Child’s disability, in that the child was only attending the School for part of the week and was dual registered. It

was also admitted that this was less favourable treatment because of the Claimant's disability and should not have happened. Therefore, this allegation is upheld.

Act 4: not fully including the Child in the Christmas show 2019

37. This allegation was found proven in part.

Not including the Child in the Christmas show

38. This is a claim for failure to make reasonable adjustments.

39. It was conceded by the School, that the Child was not originally offered a part in the Christmas show. It was also conceded that this was a failure to make reasonable adjustments on the part of the School in that the School ought to have made provision for the Child to be included and that their exclusion was because of their disability. Given this concession the tribunal found this allegation proven.

Asking the Parent what role the Child should play?

40. It was alleged that this was either direct discrimination or harassment.

41. It was an agreed fact that subsequently the Parent was contacted by a member of staff, the Classroom Teacher, from the School who asked the Parent what role they would like the Child to have in the show.

42. The Parent gave evidence that they were upset by this, we understood from their evidence that the Parent felt that it demonstrated that the Child was still not being properly considered by the School. Although we entirely accept that the Parent was upset by this, we did not consider that this treatment was less favourable treatment. The Classroom Teacher explained in the School's investigation into the Parent's complaint that they wanted to know if the Parent had any preferences that could be accommodated, and this was an attempt to make amends for not originally including the Child and to try and make life easier for the Parent as parents were required to provide costumes for the pupils in the show.

43. We concluded that any pupil who had been excluded from the show and where a parent had expressed dissatisfaction or was upset by with this (and was therefore in the same material circumstances), would have received a call from the School and would have been asked their views on what part they would like the child to play.

44. Further, we considered the alternative claim that this was harassment. We did not consider that this met the proscribed requirements of section 26 of the Equality Act 2010 in that it did not have the effect or purpose of creating an intimidating or hostile environment for the Child nor did it have the effect or purpose of creating a lack of dignity. On the contrary, it gave the Parent an opportunity to give their views as to how they would like the Child to participate.

It was part of the School's attempts to include the Child in the show, it offered the Child's parent choice and the Child opportunity. We therefore did not consider that this met the high bar the language of section 26 provides.

Leaving the Child in a back room whilst the show was performed

45. It was also alleged that the Child was left in a room at the back of the hall where the show was taking place with a member of staff. Again, it was an agreed fact that the Child was in this back room prior to their performance in the show, and that they were with a member of staff at all times.

46. The tribunal watched the video clip of the performance of the show. This did not show that the Child was left on one's own (with a staff member) in the back room.

47. The video demonstrated the following:

    31.21 The Child being encouraged to walk onto stage from the back with the TA.
    Both have their coats on.
    31:37 Lots of movement on stage at this time.
    31:39 TA sits on their haunches and helps the Child onto their lap.
    31:41 TA immediately unbuttons their coat which appears a bit difficult for them as they have to take IPad out of the Child's hands to do this first.
    32:01 Fully removes the Child's coat.

48. The evidence of the Teaching Assistant was that all the children lined up to go on stage but because of the limit of space some of them had to wait in the back room before they went on. The Teaching Assistant was backstage and was supervising the children and so had first-hand experience of what happened. We found the Teaching Assistant to be an entirely honest and candid witness who made significant effort to assist the tribunal. We therefore accepted their evidence on this point, as. This was also supported by the Classroom Teacher's account in the meeting that took place to consider the Parent's complaint.

49. We therefore find that the Child was not the only child in the room behind the stage. We also accepted the evidence of the Teaching Assistant that all children were allowed to go into the back room to move around if they needed to, as the performance was of such a length that any of them may have found sitting still hard for the whole period. In this context we do not consider that this was either direct discrimination. As such there was no difference in treatment and we therefore concluded the Child was not treated differently, or less favourably, to the other children performing in the play.

50. Furthermore, we do not consider that this constituted harassment as waiting in the room behind the stage to go on to the stage did not reach the level of having a purpose or effect of (i) violating the Child's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Child. The Child was waiting with the other children to enter the stage at their turn, they were with a member of staff (there was no suggestion that this was

an inappropriate member of staff), the Child was mid performance in the Christmas show. We accept as it was not disputed that the hall in which the play took place was cold, however we note that in the video the Child's coat had been on whilst they waited to go on stage.

51. In all the circumstances there was nothing in the evidence before us that suggested this was a violation of their dignity or in some way degrading or humiliating or offensive for the Child.

Act 5: No access to Hwb during lockdown

52. This was a claim for direct discrimination. The allegation is not found proven.

53. This allegation concerned access to the Hwb system. This was developed by the WG during the period of reduced access to education as a consequence of the pandemic.

54. It is was agreed that the Parent was aware of the School using Hwb did not raise the Child's access to this as an issue at the time, as they understood it was just for learning and not social activities as well. However, when the Parent found out, they were distressed and upset that the Child had missed out on this.

55. The School attempted to get the entire new system of remoted learning through the Hwb set up in 1.5 days. However, and crucially we accepted the evidence of the School that '*WG that arranged each child's HWB registration and disseminated this information to schools'*

56. The Child was given access to a similar remote learning system by their other School. The Tribunal accepted the evidence of the School that it was the Welsh Government ('WG') that facilitated access to Hwb and for the Child as a dual registered pupil, access was only granted to one school. This was the tribunal understood the nature of the system.

57. The tribunal find the Child was treated differently to the other pupils in the School in that they were not given access due to being dual registered. Although we also accepted the School's evidence that numerous other pupils were not registered and we have no evidence about the reason for this in the other cases where this occurred.

58. However, we find that even if this was a less favourable difference in treatment, it was not the School who had control of Hwb access or granted or excluded the Child's access, it was the WG. On this basis we do not find this allegation, which is made against the School, proven.

59. We also note that this tribunal has no jurisdiction to consider whether or not this is an act of discrimination by the WG.

Act 6: Buggy let go during handover/Not treating concern regarding handover as a safeguarding concern

60. This is alleged to be either direct discrimination or harassment. We do not find this allegation proven.

Letting go of the Child's buggy during handover

61. It was alleged that on a date in October 2019 the Teaching Assistant let go of the Child's buggy whilst handling the Child's care over to the Parent at the end of the school day and that as a consequence the buggy rolled on an incline.

62. The Teaching Assistant gave detailed oral evidence about what happened on the day. As already set out we found them to be a helpful and honest witness. The Teaching Assistant's account was that they handed the buggy over to the Teacher who walked from a blue door that was internal to the building to a set of glass doors where the Teacher struggled to get through and held the door open with their foot. The Teaching Assistant told the tribunal that they waited to ensure the Teacher had got through the door ok and then the Teacher shouted at them to ask if everything was ok, the Teaching Assistant put their thumbs up and then turned and walked to their next class which was waiting for them.

63. We also accepted the former deputy head's evidence because we found them to be a candid and honest witness and their account was supported by the contemporaneous documentation. Their account was that when the Parent made a complaint following this the Parent did not raise an issue about the release of the buggy, this further supported the Teaching Assistant account, as we find as fact that the Parent did not raise this at the time.

64. In addition although the School accepted that this was referred to in an email sent by the Parent on a date in October 2019 to the former deputy head, the ALN Service Manager and the Education Officer which contained on some concerns the Parent had. The reference was limited. It stated '*last Friday I didn't even get a proper handover, pram was pushed when I was 10 steps away*'. Had the buggy started to wheel of its own accord down an incline or even been at risk of this we find that on balance of probabilities the Parent would have mentioned this at the time in their correspondence registering their concerns about what happened on that Friday.

65. Further, this account was supported by the Teacher who gave consistent evidence on the significant point which was that it was themself who took the buggy from the Teaching Assistant whilst they were inside the School building before handing it over to the Parent and that the Teaching Assistant did not let it roll down an incline. The Teacher also told us that they spoke to the Parent immediately after the incident when the Parent was upset. The Teacher gave evidence that during this conversation the Parent asked the Teacher what was wrong with the Teaching Assistant and the Teacher responded that as far as they were aware nothing was wrong. It was agreed they offered to the Parent to speak to the former deputy head, but the Parent declined on the basis they

was too upset. There was no mention of the buggy having been released too early or being unsecured at any point.

66. Although we accepted that the Teaching Assistant was in a hurry and did not stop to speak to the Parent (this was agreed), we found as fact that the Teaching assistant did not release the buggy or even come to the external door of the School. Therefore, we did not need to go on to consider if this was discriminatory.

Failing to treat this as a safeguarding concern

67. It was agreed by the former deputy head that they did not treat the Parent's complaint as a safeguarding concern. In oral evidence the Deputy Head explained that at the point the Parent's concern was raised it was about the lack of information being provided at handover and not the fact that the Child's buggy had been released too soon. As stated above we accepted this evidence. As we find as fact that the allegation of unsafe buggy release was not raised in the complaint, it was not the case that there was a failure treated as a safeguarding concern and therefore we did not need to go on to consider if this was discriminatory.

Act 7: Telephone call made by the Teacher

68. This is alleged to be either direct discrimination or harassment. We do not find this allegation proven.

Commented that the Child had "messed all over a TA" and that this was "not right" or what the TA was paid to do.

69. It was alleged that the Teacher called the Parent and said that the Child had "messed all over a TA" and that this was "not right" or what the TA was paid to do.

70. We accepted the Parent's evidence that they were called to the School to come and take the Child home at some point in the autumn term of 2019. We also accepted that it was very likely that this phone call took place in the School administrative office where there were staff present. Indeed, it was accepted by the School that this is where phone calls to parents took place.

71. The Teacher said that they did not recall saying these words to the Parent. In fact they had no recollection of ever having called the Parent from the School. The Teacher's evidence was that they were not the Child's class teacher and therefore there was no reason for them to undertake this task, as this task would usually be done by the class teacher.

72. On the balance of probabilities, we do not find that these words were said.

73. Whilst we accept that the Child had to be collected from School at some point in the autumn term 2019, there is no specified date upon which this allegation is said to have occurred. We accept that the School has been hampered in its

ability to investigate this and respond as it is not known on which date this is said to have occurred. And further we considered it significant that this was not raised as a complaint at the time, which stands in contrast to the other complaints made by the Parent.

74. Although, again we have no doubt that the Parent was trying their hardest to assist us in their evidence, with the passage of time the Parent's recollection of the conversation may have altered in terms of the exact words used, or who said them. We do not therefore find on the balance of probabilities, that the factual part of this allegation is found proven. Therefore we did not go on to consider whether it was discriminatory.

Call being overheard

75. However, we accepted the evidence that the content of any call would be limited to the office room itself and we further accepted the oral evidence from the Teacher that the school's administrative were trained and expected to keep matters confidential and that they adhered to this duty. We further found that the office was contained and anyone outside of it would not have heard the conversation. We accepted the Teacher's evidence as we found them to be a credible witness and indeed there was no evidence that contradicted them.

76. However, we did not consider that this meant that this was an act that created an offensive or hostile atmosphere for the Child, nor one that meant he was not afforded dignity.

77. We also accepted the Teacher's evidence that the Child was not treated any differently than other pupils in this regard. And that if any parent needed to come and collect a pupil from the School then phone calls about the reasons why, which would almost inevitably be private, whether they be about health, behaviour or some other reason, would take place where the phone was located, which was in the School office and therefore was not less favourable treatment.

Act 8: Not given equal access to food or drink as other pupils

78. This concerned whether or not the Child was fed and given water whilst in the care of the Responsible Body to the extent that others. The Parent in evidence before the tribunal said that they accepted that the Teaching Assistant had been conscientious in their care in respect of feeding the Child and that they had learnt how to use the PEG feeding system and called the Parent often several times a day to check that they were doing it correctly. There was no evidence, and it was not alleged, that the Child had suffered any lack of nutrition or become dehydrated in the time he was at the Responsible Body. the Teaching Assistant said in evidence that they had willingly taken on the role of feeding the Child through the PEG system as they was happy to learn this new skill and was a 'learn as you go' type of person. The TA said they were the most confident of all the staff in taking on this responsibility which is why they were given the role. Given this evidence we do not consider that it is likely that the Child was subjected to any deficiency in feeding or drinking whilst in the care

of the responsible body and therefore it is unlikely that the Child was not offered food or drink as much as the other children.

PEG feeding 'was a favour' to Parent

79. It was also contended that the Teaching Assistant had said that they were 'doing this as a favour' and that the reason this was alleged was because it was in the paperwork. This was not in the documents that the tribunal had sight of, and as such the tribunal found that it was not proven that the Teaching Assistant said this.

Act 9: Governor's behaviour

Date of the meeting

80. This was a claim for failure to make reasonable adjustments. We found this claim not proven.

81. The documents before us showed that once the Parent put in a complaint and once the School had made a decision the Parent appealed on the 13 November 2020. As per the policy of the School this was to be heard by the Governors. On 30 November 2020 the date of 4 December 2020 was proposed as the date of the appeal meeting. On 3 December 2020 the Parent requested this to be heard over MS Teams (remotely). They also asked for the documents to be in English. This meant that it was not possible to hold the meeting on the 3 December 2020. On 4 December 2020 the chair of the governors sent the documents to the Parent and proposed 8 December 2020 as the date for the meeting. The Parent wrote back the same day saying that they could not meet on 8 December, but could meet later in the week and asked for a suggested date. On 9 December, the Parent wrote and asked for further information and evidence.

82. On 10 December the governor's sub-committee that was dealing with the complaint met to discuss the situation and what information they would share. There is then some correspondence about what information should be shared. On 12 December the chair of the governors wrote to the Parent and offered 15 December as a meeting date. The Parent responds the same day saying they could not meet that day and asking for a meeting date in the new year. The chair of governors then wrote back offering 17 December as a meeting date. The Parent responded and explained that it was unfair to go ahead on that date when they had said they couldn't attend. The Parent set out the difficulties that meeting would cause them and their family given the amount of caring responsibilities they had.

83. On 15 December the chair of governors responds and agrees to change the meeting to the New Year and offers 5 January 2021. On 4 January 2021 the Parent confirms by email that they will attend, and the meeting takes place on that date.

84. This was referred to the Governors to hear as per the School's policy. It was the School's policy to have a meeting at Stage C of the complaints procedure in 15 days (see paragraph 6.15 of the School's complaints procedure). This policy was undoubtedly written in order to ensure that both the complainant and the School had a quick resolution to any issues that arose.

85. We find that this was a policy within the meaning of section 20 and it was one that put the Child and the child's family at a disadvantage when compared with non-disabled people as it required the Child (and of course their parent) to prepare for the meeting in a fairly tight time frame despite the numerous hours of care the Child needed. The Parent told the tribunal in evidence that caring for the Child was a '24' hours a day job.

86. Therefore, we found that the duty to make adjustments arose. However, we also found that the School did make adjustments to the policy.

87. We accepted that the Parent had to raise with the School how difficult they would find meeting at fairly short notice in order for the School to make this adjustment. However, the School's reaction to this was swift. They stated in the email sent on a date in December 2020 that 'if the date and time is inconvenient then of course we can rearrange. I had thought you may want to have some closure on the matter before Christmas and as such the committee offered to convene at short notice so that matter could be resolved…'

88. We find that the fairly short timetable in the policy is of assistance to all parties as it provides an expeditious resolution to appeals to complaints. We recognise that the duty to make reasonable adjustments is anticipatory. However, we consider that as the appeal was lodged on 13 November the proposal to hear the meeting on a date in December had already extended the ordinary timetable set out in the policy. We consider that it was not helpful of the chair of governors not to accede to the request to meet in the New Year immediately and to propose another date in December. However, we note that as soon as the Parent queried this the policy was adjusted to allow a meeting date in January. Although we accept the Parent had to set out the impact of the policy on them before this additional adjustment was made, we don't consider that this amounted to a failure to make the adjustment, as the meeting date was in fact delayed until the New Year as the Parent had requested.

<u>Sending emails late at night</u>

89. This was a claim for harassment. The tribunal found it not proven.

90. There was no dispute that emails were sent to the Parent late at night. For example on a date in November 2020 email correspondence was sent at 23.50. It was explained by the chair of governors that they sent emails late at night as this was the only time they were able to do this given their other commitments both personal and professional.

91. The Parent explained that they felt this put her under pressure to respond and that this caused them distress. Particularly as it continued after they asked for it to desist. However, we do not consider that this was a matter that reached the high bar of creating an offensive, hostile or derogatory environment for the Parent or the Child, as we consider that the Parent did not need to respond, or indeed even read the emails at the time they were sent.

Act 10: Not communicating about the return to School following shielding.

92. This was a claim for direct discrimination. The tribunal found it not proven.

93. The tribunal had sight of a number of letters that were sent to all pupils about returning to school after the period of lockdown caused by the pandemic. These were also sent to the Child's family. However, they did not apply to the Child because the Child was shielding. Shielding was an additional requirement imposed by the government during the covid pandemic which mandated certain individuals to stay isolated for a longer than the period of general lockdown. We understand for the Child this period came to an end in Easter 2021. It was agreed that the School did not contact the Child at this stage and nor did they make any adjustment to their standard communications about the return to school to tell those who were shielding what to do, or what to expect.

94. The School were attending ALNCO meetings with the LA and the other school at which the Child was registered. Therefore, their evidence was that they were aware that the Child was in School and that they attended the annual review in June 2020 when they expected to discuss their return.

95. As the Classroom Teacher explained in their evidence, the School's argument was that it consciously decided not to contact the Child's family until the annual review took place. This was to stop additional pressure being put on the family. The School believed this was a reasonable adjustment on their part to the normal requirement to attend education.

96. We consider that the lack of communication from the School was far from ideal as it left the Parent not knowing what to expect and may well have been ill judged given the fact that it clearly caused the Parent some distress and upset. However, we do not find that this was because of the Child's disability. We do not find that a pupil who was shielding for a different reason would have been treated any differently. There was no suggestion in the evidence of any difference in treatment between the Child and any other pupil or person who was in the same material circumstances and therefore we do not find that this was an act of direct discrimination.

Order

97. Claim Upheld in Part.

Dated July 2022