



High Court judgement in the case of governing body of x endowed primary school against 1) special educational needs and disability tribunal (2) mr. and mrs. t (3) the national autistic society

A briefing for parent partnership services

Background

JT has Attention Deficit and Hyperactivity Disorder (ADHD) which can lead a child to exhibit non-compliant behaviour, temper tantrums, mood swings, learning problems and aggression. The school encountered a number of difficulties with JT's behaviour, culminating in JT's fixed-term exclusion from the school in November 2007.

Based on evidence to the Tribunal, the events leading up to the exclusion were as follows: JT was becoming disruptive and difficult in class and was "walking around the classroom"; JT was asked to leave the room and was led by a teaching assistant who was holding his hand; JT struggled to get free and scratched the Teaching Assistant's arm in the process.

Following a parental appeal against the exclusion, the SEND Tribunal found that had JT not displayed behavioural difficulties associated with his disability he would not have been excluded from the school so, therefore, he was treated less favourably. However, the Tribunal ruled that this was acceptable in the circumstances as the justifications given by the school – health and safety and the maintenance of good order –were substantial and material. The Tribunal did find that the Governing Body was in breach of its duties to make reasonable adjustments under Part IV of the Disability discrimination Act 1995 Act as amended and ordered the Governing Body to apologise. The Governing Body appealed this decision in the high court.

The Appeal

The Governing Body argued that the only aspect of JT's ADHD where reasonable adjustments were necessary related to his 'tendency to physical abuse of other persons'. Regulation 4 of the Disability Discrimination (Meaning of Disability)

Regulations 1996 state that a tendency to the physical abuse of other persons is not to be treated as a disability for the purposes of the 1995 Act. The Governing Body claimed, therefore, that they were not required to make reasonable adjustments in this circumstance.

**Disability Discrimination (Meaning of Disability)
Regulations 1996**

4(1) For the purposes of the Act the following conditions are to be treated as not amounting to impairments:—

- (a) a tendency to set fires,
- (b) a tendency to steal,
- (c) a tendency to physical or sexual abuse of other persons,
- (d) exhibitionism, and
- (e) voyeurism.

In response, the parents argued that the correct interpretation of Regulation 4(1) is that exemption should only apply to free standing conditions and not to consequential symptoms or manifestations of otherwise protected impairments – that since JT's behaviour was related to his underlying protected disability it should not be excluded from protection under the DDA. In addition, the Equality and Human Rights Committee and the National Autistic Society argued that, where the tendency is a consequence of a disability, exempting the behaviour of people with a tendency to physically abuse others from protection under the DDA would greatly weaken the protection of disabled people more generally.

The Judgement

The application of the Regulations

The High Court found that JT did have a tendency to the physical abuse of other persons but that this was a manifestation of his condition. However, the Court found that, even where this is a result of their disability, **anyone with a tendency to the physical abuse of other persons is not intended to have protection under the DDA in regards to that specific aspect of their behaviour.** This means that where a school can show a child has a tendency to the physical abuse of other persons they are, in regards to this aspect of their disability, entitled to treat them less favourably and have no responsibility to make reasonable adjustments. They would still have responsibilities for other aspects of his disability.

Reasonable adjustments

Despite finding that the school was entitled to treat JT less favourably in regards to his tendency to the physical abuse of other persons – the reason for the exclusion – the Court nonetheless found that the school had failed to make reasonable adjustments for other aspects of JT's disability, including non-compliant and disruptive behaviour. In this respect, the court upheld the Tribunal's ruling.

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