Browne Jacobson

New case on the reasonable adjustment duty for pupils in schools

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We support a significant number of schools and trusts each year against claims of discrimination made by parents or pupils, relating to education. Most of those claims are in the First-Tier Tribunal relating to disability discrimination, the same tribunal that considers claims from parents linked to Education, Health and Care Plans (EHCPs).

In December, the Upper Tribunal, on an appeal we made on behalf of a school, considered the reasonable adjustment duty for schools under the Equality Act 2010 and specifically the amendments for schools.

A Multi Academy Trust v RR [2014]

These amendments had not been considered in any detail by the Courts, but in this case, A Multi Academy Trust v RR [2014], the Upper Tribunal explicitly considered these amendments.

The case related to a special school and a pupil, SR, whose parent had brought a claim for discrimination. Whilst most of the claims were dismissed by the First Tier-Tribunal, one claim relating to a lack of a documented transition plan to the school, was found to amount to discrimination.

“Errors of law”

The appeal to the Upper Tribunal was on the basis that the First-Tier Tribunal had made errors of law and not given adequate reasons for the decision.

Specifically, the reasonable adjustment duty in section 20 of the Act, whilst usually being about overcoming disadvantage to the pupil or person concerned, is amended in a school context where the relevant provision, criterion or practice (“PCP”) that needs adjustments made to it relates to education, access to a benefit, facility or service.

In RR, the Upper Tribunal confirmed that a transition plan to the school was related to education and so the amendments applied. The Upper Tribunal, with reference to other existing cases that considered similar provisions in the Equality Act 2010, confirmed in RR that where the amendments apply, parliament’s intention was that the disadvantage of the PCP needed to be on a group of pupils, not just the individual pupil concerned.

What does this mean in practice?

In practice, this means that in reasonable adjustment claims relating to pupils about educational provision or services or benefits provided, parent claimants will need to be clear on the group of pupils that the PCP disadvantages, beyond their own child.

The Upper Tribunal accepted that identifying this group would be difficult in some cases and additionally we suspect that the evidential burden will also be more difficult on parent/pupil claimants, given the need to show not just disadvantage to their child, but to a wider group of pupils.

The Upper Tribunal agreed that there had been an error of law in the relevant case and related lack of reasons, overturning the First Tier Tribunal's decision and referring it back for reconsideration.

Our team is always happy to assist schools that need advice or support in relation to special educational needs and the Equality Act.

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