

Education Matters

Spring 2019

Brachers is a leading provider of legal and HR advice to schools, academies and higher educational establishments. The Education team brings a fresh approach to the sector, collaborating a team of lawyers and HR consultants that advise on the issues faced by the sector in a straight forward, jargon free, approachable manner.

We strive to provide a service that recognises the specific needs, aims, challenges and culture of your organisation, whilst bringing a wealth of knowledge and solutions from our past experience. We hope we can share our passion and enthusiasm with you, working in partnership in pursuit of delivering educational excellence.

In our termly education newsletter we will bring you the latest in legal updates, guidance, news and insight from the education sector. In this issue we look at some recent cases and changes that have occurred.

It is important to us that we offer you real value and relevant, useful information. Please help us by providing feedback and comments as well as any ideas on what you may like to be covered in future newsletters. Also, if you would like to contribute an article and/or share some valuable know-how please do contact us.



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The Mayor & Burgesses of the London Borough of Lambeth v Agoreyo [2019] EWCA Civ 322

The Court of Appeal overturned the High Court's decision, and found that it was not unreasonable for a school to immediately suspend a teacher who had been reported for dragging a child across a classroom floor.

The trial judge was entitled to conclude on the basis of the evidence before him that the suspension was not a repudiatory breach of contract. It was obvious that there were serious allegations of misconduct that needed to be investigated. The court had to assess whether the employer's response to the possible misconduct was reasonable and proper to allow matters to be investigated. If it was, it could not be a repudiatory breach of contract. Given the context, it was open to the judge to find that the employer had reasonable and proper cause to suspend and the High Court should not have interfered with that conclusion.

What does this mean for you?

This case emphasises the importance of:

- Identifying whether there is an express power to suspend employees in the employment contract. Although you will still need to think through whether there's proper cause to exercise that power, it will be easier to defend a suspension in reliance on an express power;
- Considering the alternatives to suspension. Suspension should not be a "knee-jerk" reaction;
- Recording deliberations and reasons for suspension;
- Regularly reviewing the suspension and keeping the employee informed.



Sutton Oak Church of England School v Whittaker UKEAT/0211/18/BA

The claimant, a male gay school teacher, was dismissed for being in a classroom alone with, and offering sweets to a male pupil. This was in breach of guidelines issued to him 13 years prior. The Claimant initially succeeded in claims for unfair dismissal and direct sexual orientation discrimination before a tribunal. In finding the discrimination claim proven the tribunal had used a hypothetical comparator in the form of “a heterosexual male teacher found along with a female pupil.”

The EAT overturned the finding of discrimination and held that it was not clear from the Judgment whether the tribunal’s comparator had been the subject of a warning in 2002 for inappropriate contact with children, a point the EAT was not prepared to infer. The EAT held that there was no proper factual foundation for the conclusion that the claimant’s treatment was on the grounds of sexuality, the tribunal’s decision being based on an incorrect factual premise and on factors relevant to individuals who were not the actual decision-makers.

What can schools learn from this case?

While the finding of discrimination was overturned by the EAT and sent back to the tribunal to decide upon, the finding of unfair dismissal remains and the case highlights the importance of following a fair and reasonable procedure when dismissing an individual. Even in cases where the employee has appeared to be in clear breach of rules regarding conduct.

It is important for schools to ensure that investigating officers are impartial, that investigations are thorough and all evidence is considered and that investigations are concluded in a timely manner.



R (An Academy) v Medway Council and Secretary of State for Education (2019) EWHC 156 (Admin)

The High Court recently handed down a judgment in this case. This is a comparatively rare judicial challenge in the area of special educational needs.

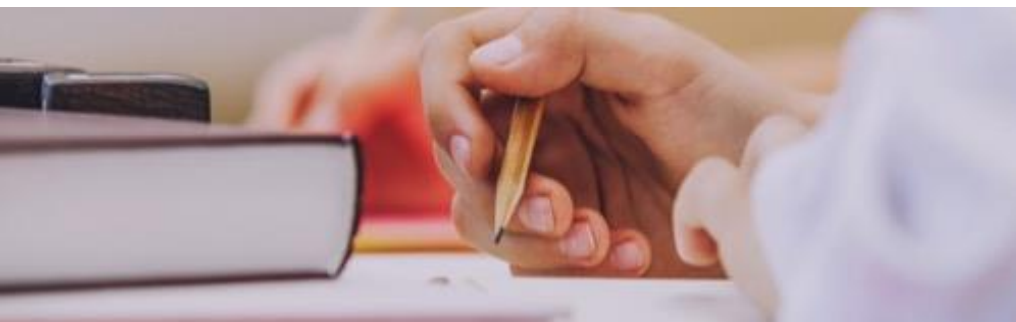
The judgment explains that where parents express a preference for a particular mainstream school, the Local Authority must properly and carefully assess suitability. If that school is not suitable, the duty to provide a mainstream school then engages. However, the duty is not to provide the particular mainstream school the parents have requested, but rather to find an “appropriate” mainstream school.

In respect of the content of an Education, Health and Care Plan (EHCP), the Judgment highlights that where a child moves from one Local Authority to another, there is clearly a presumption that that EHCP, and the provision within it, should be upheld by the new Local Authority. The new Local Authority is perfectly at liberty to undertake a reassessment and, in light of that reassessment, rewrite the EHCP but is not entitled to rewrite the EHCP in order to suit its own purposes.

How can we help?

We can help in preparing and submitting evidence on why an ECHP is unsuitable for your establishment or on the costings that will make it suitable. We can also advise and assist in bringing a challenge where your establishment is named in the ECHP but you do not receive sufficient funding.

For more information on this article please see our website or to find out more about how we could help your establishment, please contact a member of the team.



New Ofsted Inspection Framework: What does it mean for schools?

Ofsted launched a consultation recently on proposals for changes to the education inspection framework. If approved the new framework will take effect from September 2019. Ofsted is proposing changes to the way it assesses teachers and pupils alike, to ensure students receive the best education possible which may then lead to changes within your school.

Key proposals include:

- A new 'quality of education' judgement, with the curriculum at its heart.
- Looking at outcomes in context and whether they are the result of a coherently planned curriculum that is delivered well.
- No longer using schools' internal performance data as inspection evidence, to ensure inspection does not create unnecessary work for teachers.
- Separate judgements about learners' 'personal development' and 'behaviour and attitudes.'
- Extending on-site time for short inspections of good schools to 2 days, to ensure inspectors have sufficient opportunity to gather evidence that a school remains good.

<https://www.gov.uk/government/consultations/education-inspection-framework-2019-inspecting-the-substance-of-education>

What this may mean for your school?

It is important to remember that the quality of teaching, learning and assessment will still be judged but the focus is likely to be around your curriculum, rather than pupil outcomes.

It is understood that Inspectors will look to understand the purpose and usefulness of internal pupil data by asking school leaders to explain why the data is being collected, what they draw from it and how it informs their curriculum and teaching. Leaders will therefore need to be prepared to explain and deal with this.

New judgements on **behaviour and attitudes** and **personal development** will aim to provide better information to parents about how well behaviour is managed in a school. Therefore, this may lead to a review of your behavioural policy in your school.

The consultation is open until 5th April 2019.



Reducing workloads in your school(s)

Teachers' workload is at unprecedented levels and in March 2019 the DfE updated their guidance on ways to reduce workload which includes helpful tips from school leaders, teachers and sector experts.

<https://www.gov.uk/guidance/reducing-workload-in-your-school>

Educational Psychologists in schools

In recent years there has been a huge rise in the number of cases of children suffering from mental ill health and the government has announced that thousands of children across Britain will benefit from mental health and special needs support as funding worth over £31.6 million is announced to train more Educational Psychologists.

The DfE has guidance on how schools can support pupils whose mental health problems manifest themselves in behaviour.

<https://educationinspection.blog.gov.uk/2018/11/30/teacher-well-being-and-workload-survey-interim-findings/>

<https://www.gov.uk/government/publications/mental-health-and-behaviour-in-schools--2>



Teacher Recruitment & Retention

Teachers endure greater job-related stress than other professionals according to a recent report published by the National Foundation for Educational Research (NFER).

Teacher recruitment and retention strategy

The NFER report comes shortly after the government published the Teacher Recruitment and Retention strategy which can be found at <https://www.gov.uk/government/publications/teacher-recruitment-and-retention-strategy>

Tips for improving staff wellbeing in schools

It is hoped that the recent government strategy will address the growing shortage of teachers but in the meantime staff wellbeing has also never been more important.

There are plenty of ways schools can support their staff and encourage wellbeing and some of these are listed below:

- Regularly ask staff how they are doing.
- Ensure there is a staffroom to relax in, and take a lunch break.
- Communicate well: Publish dates of key events/report/parents evenings at the beginning of the academic year.
- Manage communication so it is clear but not too much. Send out communications at reasonable times.
- Thank staff for their work.
- Create a culture where it is okay to say “I am finding this hard or I am really stressed by this.”
- Set up a mentor system where staff are buddied up and supporting each other.
- Where possible, accommodate staff requests for leave.

For further details on the above please visit

<https://www.brachers.co.uk/knowledge/article/teacher-recruitment-and-retention>



Faith schools and Religious Discrimination

The Employment Appeal Tribunal (EAT) has ruled that an Orthodox nursery did not commit an act of religious discrimination by dismissing a Jewish teacher who revealed that she lived with her boyfriend.

The EAT concluded that there was no sufficient evidential basis for the conclusion that the Appellant discriminated against the Respondent because of her religion or belief.

The EAT also concluded that there was no sufficient evidence to support the tribunal's conclusion that the appellant had applied any provision criterion or practice to the Respondent.

The legislation

Under the Equality Act 2010 (EA 2010), faith schools are permitted to take into account religious considerations in employment matters, relating to head-teachers and teachers, in accordance with

the School Standards and Framework Act 1998.

Section 124A of the School Standards and Framework Act 1998 states "Regard may be had, in connection with the termination of the employment or engagement of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious discrimination."

Faith Schools should however take care in applying this provision and dismissing employees because of conduct which is incompatible with a religion and should seek appropriate HR and legal advice before doing so.

For further details on the above please visit

<https://www.brachers.co.uk/knowledge/article/faith-schools-and-religious-discrimination>



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Meet our team

60 Seconds with Wendy Tull, Kent HR

Wendy joined Kent HR as a Consultant in the Employment and HR Team in March 2019. She has previously worked with a variety of public, private and third sector organisations including: the London Borough of Hammersmith and Fulham; Givaudan; Ministry of Justice; Kent Police; Scope; and the Institute of Education.

Wendy has extensive experience of carrying out investigations and managing complex disciplinary and grievance cases; implementing organisational restructures, redundancy processes and TUPE transfers and in-depth negotiations with a variety of unions and non-union environments.

Wendy is a Fellow of the Chartered Institute of Personnel and Development (CIPD), with over 25 years' experience. She is a trained mediator and has worked with a range of organisations to support early intervention solutions.

If you would like to discuss how KentHR or Wendy might be able to support you then please contact her on 01622 690691.

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