



February 2010

News

Children Schools and Families Bill – progress

The Bill continues to work its way through the parliamentary process and is at the stage of Public Committee. It will make provision about pupil and parent guarantees providing schools with a duty to fulfil the parents and pupils 'ambitions' as encapsulated in the proposed legislation. The Bill also contains provisions to amend earlier legislation to enable the pupil or parent to approach the Local Government Ombudsman (LGO) to complain of the failure of the head teacher to comply with the requirements of the guarantees.

Parent complaints

In case head teachers feel singled out in the Children Schools and Families Bill there is already in existence under the Apprenticeships, Skills, Children and Learning Act 2009 the ability of a parent, pupil or guardian to apply to the Independent Government Ombudsman (LGO) where the claimant alleges 'injustice' because of the actions or omissions of the governing body or head teacher.

Following Special Education Needs (SEN) Consortium chair Brian Lamb's inquiry into SEN proviso in 2009, from the 12 January 2010 the LGO will deal with complaints about SEN Services and provision with a wider remit. Instead of simply considering the administrative actions of local authorities when discharging their statutory obligations, the LGO can now request information from the local authority and will be able to investigate maladministration as well as failures in a statutory duty. They will consider whether a local authority is acting reasonably in respect of SEN performance, and whether the local authority has failed to put in place the SEN provision referred to in a Statement of Needs. Significantly, the schools have no right to appeal against decisions made by the LGO. Concerns are that the schools will not have the funding to provide the required care, if the local authority does not make provision. Further, where schools feel that provision is inadequate but the parents won't appeal themselves, no appeal will be made and the children could lose out.

Weather driven absenteeism

The recent severe weather conditions have raised concerns about schools absence records. Where schools stayed open but pupils were unable to attend the current 'Pupil Registration Regulations 2006'

are clear that non-attendance has to be recorded. This means that these schools will have a higher absence rate than those forced to close. The DCSF guidance is that schools should stay open where it is safe for them to do so. Given the possible distorted figures during spells of inclement weather the DCSF is looking at ways that absences can be recorded differently to take into account exceptional circumstances.

Safer Internet day

This took place on Tuesday 9 February and is a European wide initiative to focus on Internet safety issues. A range of activities are taking place from 8-12 February (see DCSF site and the Child Exploitation and On-line Protection Centre). Foot Anstey will be running a lunch at our Exeter office to provide some information on schools and colleges responsibilities regarding social networking abuse as both a provider of education and as an employer, as well as an opportunity for discussion.

For further information please contact Esther Maxwell at esther.maxwell@footanstey.com

Case reports

G v X School

This case concerns the right of a claimant to be legally represented at a disciplinary/appeal hearing.

The background is that G, a part time teaching assistant on work experience at the school, was accused of initiating an inappropriate relationship with a 15 year old boy. The matter was referred to the Crown Prosecution Service who, after consideration, dropped the case. The school instigated its disciplinary process and informed the claimant that in the event that the Governors found the allegations proven, the school would be obliged to inform the Secretary of State that they had concluded that the claimant was unsuitable to work with children. This could result in a listing on the ISA 'barred' list and would affect any future job applications.

The school disciplinary procedure provided that in any hearing the claimant could be accompanied by a colleague or trade union representative. The claimant was not a member of any trade union and given the nature of his employment could not call on any colleagues. He therefore requested that he should be able to be legally represented. The school and local authority indicated that this was not possible and that no other person would be permitted to enter the hearing. The panel found that inappropriate contact was made with the child and that this action constituted a breach of trust and constituted gross misconduct. Summary dismissal followed and the matter was referred to the ISA. The claimant lodged an appeal and again asked to be allowed legal representation. The request was again refused.

The claimant bought judicial review proceedings challenging the governors decisions not to allow him legal representation at the disciplinary or appeal hearing and claimed that he had rights to representation under Article 6 of the European Convention of Human Rights. The Court of Appeal held that whilst the disciplinary proceedings did not constitute part of the criminal process for the purposes of Article 6, that legal representation was required under the civil limb of Article 6(1).

Article 6(1) provides that:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

The Court found that "in view of the gravity of the allegations and the severity of the consequences of a S.142 direction (ISA Implications) legal representation at the disciplinary hearing was required as a commensurate measure of procedural protection. G could not fairly be expected to represent himself and being accompanied by a trade union official or a work colleague, even if available, was not sufficient".

In conclusion, whether legal representation should be allowed depends on applying a fairness test in light of the particular circumstances. It is not appropriate to assume that because school and local authority disciplinary procedures state that only trade union or colleague representation is allowed that no legal representation could or should be considered.

Q & A

If you have a topic or question you would like answered and which can be covered in the bulletin, please forward it to us. The question will be edited so the identity of the questioner will not be given and anonymity assured.

For further information or advice on any education issue please contact Julia Green, associate on:

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