

Advocacy in Action: online learning during a national pandemic

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As a result of this seismic change in how education is delivered in the classroom, some parents have been dissatisfied with the level of teaching and support that has been provided to their child. For those parents whose children have special educational needs or disabilities, this can lead to schools having to justify their approach before the First Tier Tribunal in the face of a Disability Discrimination Act claim. Browne Jacobson barristers have already represented several schools in such claims.

The parent of Pupil A brought a discrimination claim against the school. The claim was brought under section 20 of the Equality Act 2010, and the parent submitted that various features of the school's online learning approach placed Pupil A at a substantial disadvantage. The three broad areas of the claim were as follows:

1. Pupil A could not access online teaching on Microsoft Teams;
2. Pupil A could not submit classwork and homework on the school's online platform; and
3. Pupil A did not receive adequate support for the independent study that Pupil A had to complete for study skills.

In respect to the first aspect of the claim, the parent alleged that Pupil A was placed at a substantial disadvantage by lessons being delivered on Microsoft Teams. The parent asserted that Pupil A could not participate effectively in an online lesson without accompanying support from a teaching assistant.

The Tribunal heard evidence that Pupil A had been provided with hover teaching assistant support before the lockdown, and the parent advanced that Pupil A should have received a Velcro-type teaching assistant support during online lessons, given the barriers faced by Pupil A.

The Tribunal heard evidence from the school as to how they had deployed a number of strategies to ensure that Pupil A could participate fully in online lessons; this included, but was not limited to, Pupil A receiving support from a teaching assistant via a separate Microsoft Teams chat feature, Pupil A being encouraged to email the teaching assistant during the lesson, and Pupil A being able to call the teaching assistant during or after the lesson to address any issues Pupil A had during the lesson.

The Tribunal agreed with our submissions that online learning did not place Pupil A at a substantial disadvantage. In part, this was due to the evidence that the Tribunal heard from the school which made it plain that Pupil A had accessed this online teaching and had done so effectively during the lockdown period. Coupled with this, the school had implemented several strategies to help Pupil A engage with online lessons, strategies which exceeded the level of support that was mandated by Pupil A's EHCP.

As regards to submitting work online, Pupil A's parent averred that Pupil A was not able to do this and required support from staff. The parent therefore submitted that Pupil A was placed at a substantial disadvantage by not being able to receive feedback on the work Pupil A had completed.

In counterpoint, the school told the Tribunal that all pupils were shown how to submit work online, and in addition to this, pupils were able to call upon the assistance of teaching assistants if they encountered any problems with uploading work. The Tribunal also heard evidence that Pupil A had, on several occasions, submitted online work.

The Tribunal was again with the school on this aspect of the claim. The Tribunal was satisfied that the school had put in place measures to ameliorate any disadvantage that Pupil A had with submitting work online, and the Tribunal was not persuaded that Pupil A was placed at a substantial disadvantage by having to submit work online.

Turning to the final aspect of the claim, the parent argued that during periods of lockdown, Pupil A did not have support from a teaching assistant in the evenings when Pupil A was completing work for study skills.

The school, in response, told the Tribunal that Pupil A was provided with support during the school day, support which included dedicated teaching assistant time for such independent learning to be completed. To this, the school also underlined to the Tribunal that it wanted to instil some independence into pupils by requiring them to undertake independent study, given the stage of their academic journey (approaching the end of Key Stage 3). The Tribunal decided that Pupil A was properly supported by the school, and the Tribunal could not identify any distinctive feature of the school's approach to independent learning which placed Pupil A at a substantial disadvantage.

Schools have faced, and will continue to face, obstacles in how it delivers education to its pupils in a COVID-19 world. Schools will also continue to face discrimination claims brought by parents who are not satisfied with the level of support provided by the school. When confronted with such issues, schools may wish to give some thought to the following questions:

- What are the features of the pupil's difficulties?
- Is the pupil substantially disadvantaged by a school policy or decision?
- If so, what can the school do to address this substantial disadvantage?
- Whilst we are not currently in a lockdown, if online learning is to continue in some degree, what additional support can schools put in place to assist with online learning?
- What strategy do the parents suggest to remedy a stated difficulty?
- What are the pupil's views in respect to the difficulty cited by the parents?
- What are the pupil's views in respect to what may alleviate such a difficulty?

The above questions will no doubt be on schools' radars, but it should not be forgotten that those questions are likely to surface more frequently and become more pertinent as schools continue to navigate their way through a global pandemic.

Browne Jacobson barristers regularly appear at inquests, Disability Discrimination Act claims, EHC Appeal hearings and Independent Review Panel hearings for exclusions for both schools and local authorities.

Our team of barristers also provide specialist advice and advocacy services to the Department for Education and further education institutions and specialise in disciplinary proceedings. You can instruct one of our barristers either through Browne Jacobson's education team or by contacting [Claire Smith](mailto:Claire.Smith@brownejacobson.com) at barristers@brownejacobson.com or on [0330 045 2323](tel:03300452323).

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