

	Complainant	Respondent
Anonymised Parties	A Transition Year Student	A Secondary School
Representatives		Mason, Hayes & Curran

## Complaint:

Act	Complaint Reference No.	Date of Receipt
Complaint seeking adjudication by the Workplace Relations Commission under section 77 of the Employment Equality Act, 1998	CA-00013978-001	15/09/2017
Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000	CA-00015738-001	12/11/2017

Date of Adjudication Hearing: 27/06/2019 Workplace Relations Commission Adjudication Officer: James Kelly Procedure:

In accordance with Section 79 of the Employment Equality Acts, 1998 - 2015, and Section 25 of the Equal Status Act, 2000, following the referral of the complaints to me by the Director General, I inquired into the complaints and gave the parties an opportunity to be heard by me and to present to me any evidence relevant to the complaints.

I have decided to anonymise the parties on the basis that the Complainant is a minor with a hidden disability. Background:

The claim before me for consideration relates to an allegation that the Complainant was discriminated against on grounds of disability. She also alleged that the Respondent failed to provide her with reasonable accommodation.

The Respondent refutes the complaint made by the Complainant, it said it was doing its very best in the circumstances.

## Summary of Complainant's Case:

The following is a summary of the Complainant's case.

The Complainant said that in January 2017 the school sought applications for the annual Transition Year (TY) trip to France. The scheme was offered on a "first come first serve basis" i.e. the first 20 students with their deposits submitted would be accepted (this was the only criteria stipulated). The Complainant was one of the first 20 students with her booking fee and was accepted by the school to take part in the annual TY exchange programme. Following her acceptance, the Complainant fully participated in all matters relating to the preparation of the TY exchange programme and was requested by the school to complete a profile for her "host" family which she completed.

Following a face to face meeting on 27 February between the Complainant's mother, the school principal Ms A and the TY exchange school staff, the school issued a letter on 3 March to the parents of the Complainant outlining the School's insurers conditions which must be met and accepted by the insurers prior to the Board of Management allowing the Complainant to further participate in the TY exchange programme. On Monday 13 March the Complainant's parents responded in detail to the letter and provided a detailed care plan and other relevant information.

The Complainant's parents said that the Board of Management had placed an additional requirement onto the insurer's conditions, namely that a family member would have to accompany her on the trip if she were to attend.

The Complainant's parents indicated they were unable to meet the Respondent's stipulations that "*either a Parent or designated family member should travel to [a city in France] for the duration of the trip*". The Complainant and her parents gave evidence that a very close family relative was terminally ill at the time and there was no one in a position to travel with the Complainant.



On Tuesday 14 March the school Principal Ms. A contacted the Complainant's parents by phone informing them that the school's Board of Management was refusing to allow the Complainant to travel that (sic) "*no family member travelling there can be no travel for [the complainant]*". Later the same day they received a letter in the post requesting them to attend a meeting that afternoon regarding the exchange. The purpose of this meeting was for the teachers to meet with the parents and students travelling to France at 4:15pm in the school. The Complainant's parents said that due to the phone call they received earlier that morning, which the Complainant was unaware of, they had to immediately contact their daughter and inform her of the school's decision to exclude her from the trip and not to go to the meeting. This caused her great upset and distress and they had to take her home.

The Complainant said that the decision by the school disbarred her from any further activity with the group of 19 students she had formed a shared bond with. Following this refusal, they met on 15 March with both the school Principal and the Chair of the Board of Management Mr. B. During the meeting they were informed that due to their daughter's food allergy, the teachers travelling to France were refusing to take responsibility for the Complainant and therefore she could not travel unless either a parent or designated family member would travel for the duration of the trip and who were required to take full responsibility for all aspects of her care during the trip. The parents asked if the school had forwarded their care plan and information to the School's insurer and had they accepted the information provided. The school informed them that they had not sent the information to the insurer and that the decision was made solely on the fact that no parent or guardian was able to travel.

The Complainant referred to the Department of Education Circular Letter M20/04 entitled "Educational Tours by School Groups (both inside and outside the State)". This states that Schools should ensure that adequate insurance cover is in place and that written parental approval is obtained for each pupil to take part in the tour. Such written approval must not seek to devolve any liability to the parent for any aspect of the tour. The Respondent's logic for exclusion and prohibiting the Complainant from travel was contradicted by the fact that they had allowed her to travel to Manchester on 7 April. The Complainant said it should be noted that this was a different group of teachers who were willing to bring the Complainant on their trip compared to those who were not i.e. those travelling to France.

The Complainant said that the decision by the Board in support of the teachers who refused to allow the complainant travel to France over the Complainant's right to travel was direct discrimination against the Complainant because of her disability. During the meeting the Complainant's parents said that they highlighted a number of areas where their reasoning for excluding their daughter was inconsistent and were not in keeping with their school's ethos or policy on inclusion. They also noted that the school in France was not willing to accommodate the Complainant due to her food allergy. The parents highlighted that this was not correct and claims that a French work colleague made contact with the host school directly on their behalf and spoke to the person responsible for co-ordinating of the exchange programme s and he confirmed that they had no problem accepting a student with a food allergy.

The Complainant said that another reason raised during the meeting was that the school was having difficulty in finding a host family for the Complainant. However, on 20 March the school principal emailed the Complainant's parents stating that should they be intending in accompanying their daughter on the trip that the situation had now changed. The email said that the student with whom they had paired the Complainant with was now leaving the school to go the vocational route in his education programme. The email stated that the boy would not be travelling to Ireland as part of the exchange and the organiser had indicated that the family were not in a position to host/accommodate the Complainant as the parents work late. The Complainant's parents' evidence was that this contradicted previous statements about the arrangements.



The Complainant's parents said that they informed the Principal and the Chair of the Board of Management that they had contacted another school in the area that day and have taken a number of students with the same severity of food allergy as their daughter abroad to places such as Barcelona and Rome. That school managed all aspects of the trip including medication and did not seek any preconditions around the travel or participation of the student with a food allergy. The Complainant said that school did not impose social barriers on the participation of students fully in school activities, in addition as the school had adequately prepared and trained the teachers, there was neither prejudice nor exclusion of any child who wished to participate.

The Complainant said, as required under the Equal Status Acts the school has at no stage sought to make reasonable accommodation towards her and her illness which would have allowed her to travel. The school consistently put counter arguments to any of her suggestions and it has simply refused her travel to France.

#### Summary of Respondent's Case:

The following is a summary of the Respondent's case.

The Respondent said that the Complainant commenced attending the school in or around September 2013 in First Year. It is not in dispute that the Complainant has a disability for the purposes of the Equal Status Act 2000.

The claim before the Workplace Relations Commission relates to an allegation that the Complainant was discriminated against on grounds of disability. It is alleged that there was a failure to provide the Complainant with "reasonable accommodation".

The Respondent refutes, in its entirety, the complaint made by the Complainant.

The Complainant suffers from a severe nut allergy and has had this condition since she was 5 years old. This condition is managed through medication. From the outset, there was a heightened awareness and concern around the Complainant's condition. Prior to her starting in First Year, the school were made aware that she had a severe nut allergy. The Complainant, along with her parents, addressed the staff of the school in August 2013, explaining that her allergy was life threatening and advised on the procedures in the event of an emergency. It was made clear to the staff that the condition required complex management.

Following on from the Complainant and her parent's address to the staff and given the severity of the condition, the Respondent created a "*nut free school*". Parents, pupils and staff of the school were informed that nuts could not be brought into the school. Further, the Respondent rolled out a Policy governing "Illness in Students. Staff members were trained on how to respond if the Complainant suffered an allergic reaction.

The Respondent said it runs an annual student exchange programme with a school in France. This exchange programme has been running for over 20 years. Every year, approximately twenty students from Transition Year travel to and stay with a "host family". The idea is that the student is immersed in French culture. The trip is popular amongst the students and traditionally two teachers have attended the trip for the purposes of supervising the students. The duration of the trip is 10 nights in total. The Respondent has a policy governing school tours and trips.

In January 2017, the Complainant applied to attend the trip to France, given the level of concern around the Complainant's condition, the Respondent had reservations surrounding her attendance on such a trip from the start.

On 27 February 2017, the Respondent met with the Complainant's mother. The purpose of the meeting was to determine the extent of the care and responsibility required for the Complainant on the trip. The Complainant's mother advised that the Complainant was on new medication and that her nut allergy was still as severe as ever. The Respondent was again made aware of the life-threatening nature of this allergy. The Respondent communicated its concerns around the Complainant's attendance on the trip, specifically, in the event of an emergency in a foreign country without adequate



teacher supervision. It was communicated to the Complainant's mother that the two teachers attending the trip were not comfortable with the level of responsibility required to take the Complainant on the trip.

Following on from the meeting on 27 February 2017, the Respondent contacted its insurer. The insurer advised the Respondent that a written care plan was necessary for the Complainant to attend the trip. This written care plan was to be signed by both the Complainant's doctor and parents. The Insurance company requested that the care plan cover all aspects of the trip. In particular, they requested the plan to address the following: 1. The Complainant's accommodation; 2. The school the Complainant would be attending; 3. Social situations which the Complainant would be in, specifically if there was no teacher present.

These were preconditions set by the Respondent's insurer to the Complainant's participation in the trip. Further to this however, the Board of Management requested that a parent or designated family member travel to France for the duration of the trip and in the event of an emergency, they would be responsible for the Complainant. It was felt that if there was a medical emergency, there would not be adequate cover given that only two teachers were going on the trip. The Respondent said that the care plan simply was not workable unless a member of the Complainant's family attended the trip. This requirement was communicated to the Complainant in a letter dated 3 March 2017.

On 13 March 2017 the Complainant's parents wrote to the school enclosing a detailed care plan, which was signed by them but not by the Complainant's doctor. Despite the Board of Management's request, they advised that they were not in a position to travel to France with the Complainant, nor was a family member.

On 14 March 2017, the Respondent contacted the Complainant's parents by phone to inform them that the Board of Management did not want the Complainant to attend the trip on the basis that a family member could not go with her. It was reiterated to the Complainant's parents that the level of responsibility that would be placed on the two teachers by the Complainant's participation in the trip without a family member was excessive.

On 15 March 2017, the Respondent and the Chairperson of the Respondent's Board of Management met with the Complainant's parents. At this meeting, the Respondent's concerns were again communicated to the Complainant's parents. The Complainant's parents were informed that the teachers attending the trip were not comfortable with the level of responsibility required if the Complainant were to attend. The Respondent reiterated that there would be no issue with the Complainant's attendance on the trip if a family member were to attend.

Following on from the meeting on 15 March 2017, the Respondent was informed that the French student, whom the Complainant was paired with, was leaving his school in France and would not be traveling to Ireland. The Respondent said that the French School advised that they would not be in a position to accommodate/ host the Complainant. It said that this was communicated by email on 15 March 2017. The Complainant's mother was informed of this by email dated 20 March 2017.

On 11 May 2017, the Complainant sent an ES.1 Form to the Respondent in which she alleged that the refusal to allow her on the trip amounted to discrimination. The Respondent prepared a response to the ES.1 Form on 12 June 2017. The Respondent outlined that it simply was not possible for the Complainant to attend the trip without a family member. The response further outlined that the French counterparts were also not entirely comfortable with the Complainant's attendance on the trip. The response also detailed the comparison between the France and Manchester trips.

**Legal Submission** 17. Section 2(1) of the Act defines disability as:

*“(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,*

*(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,*



*(c) the malfunction, malformation or disfigurement of a part of a person's body,*

*(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or*

*(e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour”*

The Respondent acknowledged that the Complainant has a disability for the purposes of the definition provided in Section 2(1) of the Act. It is denied however that the Complainant was discriminated against by the Respondent on the grounds of her disability. It is further submitted that the Respondent discharged its obligations under the Act and did all that was reasonable to accommodate the Complainant.

It is submitted that the Complainant was not denied reasonable accommodation. The Complainant's parents were informed by the Respondent at the time that if the Complainant had a family member on the trip, she could attend. This was reasonable and appropriate accommodation given the severity of the Complainant's condition.

The Respondent said that without prejudice to the above, it can rely on the defence set out under Section 4 of the Act. Namely,

*“4.—(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.*

*(2) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question.*

*(3) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers does not constitute discrimination if, by virtue of another provision of this Act, a refusal or failure to provide the service in question to that person would not constitute discrimination.*

*(4) Where a person has a disability that, in the circumstances, could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.”*

The Respondent said that the Complainant's condition is serious and requires complex management. In this regard it should be noted that one of the teachers who was going on the trip was the Respondent's medical files coordinator. The Complainant has always been at the top of a priority/emergency list of cases due to her severe allergy. When the Complainant's family were asked by school management if the Complainant could be removed from the top of the list based on the fact that the allergy was not considered as serious as initially presented, the answer was no.

The Respondent was concerned that due to the nature and duration of the trip, 11 days with students staying with families over a wide geographical area, it would not be able to provide the same level of care to the Complainant on the trip as the Complainant received in school in compliance with the school's "Illness to Students" policy. Accordingly, it was appropriate that the Respondent suggested that a family member accompany the Complainant on the trip given that only two members of staff would be travelling and were expected to supervise 20 students. The Respondent accepts that this condition did not attach to any of the other students travelling; this was because none of the other students suffered from such a serious condition as the Complainant's. The Respondent felt strongly that the Complainant needed a level of supervision that simply could not be provided by the two staff members. In order to ensure that the school continued to comply with its "Illness to Students" policy on the trip.



The Respondent referred to a previous school trip to Manchester which the Complainant attended. It is submitted that this trip is distinguishable to the trip to France. This trip to Manchester was for a total of four nights whereas the trip to France was for 11 days. There was no language or staffing issues with regard to the trip to Manchester in the event of an emergency. There were sufficient members of staff participating in the trip to enable the school to implement its "Illness in Students" policy on the trip. The staff and students stayed in the same hotel. In other words, the Respondent would be able to provide the same level of care to the Complainant as the Complainant received in the Respondent's school. That was not the case in relation to the trip to France.

The Respondent said it wanted to facilitate the Complainant's participation on the trip. Regrettably this was not possible for a number of reasons not all of which were connected to the Respondent. The Respondent said that the school acted in what it perceived to be the best interests of the Complainant. The Respondent said it did its best to accommodate the Complainant's disability in the context of her potentially life-threatening condition and to facilitate her participation on the trip.

#### Findings and Conclusions:

CA-00013978-001 Complaint seeking adjudication by the Workplace Relations Commission under section 77 of the Employment Equality Act, 1998

I note that the Complaint was lodged under both the Employment Equality Act and the Equal Status Act and after consideration I am satisfied that the case is not proper to the former. Accordingly, I decide that the complaint under the Employment Equality Act is not well founded and fails.

CA-00013978-002 Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000

Section 38(A) of the Equal Status Acts sets out the burden of proof which applies in a claim of discrimination. It requires the Complainant to establish, in the first instance, facts upon which he or she can rely in asserting that prohibited conduct has occurred in relation to him/her. In deciding on this complaint, therefore, I must first consider whether the existence of a prima facie case has been established by the Complainant. It is only where such a prima facie case has been established that the onus shifts to the Respondent to rebut the inference of discrimination raised. In making my decision in this case, I have taken cognisance of all the oral and written submissions made by the parties.

Direct Discrimination - Disability "Disability" is defined in Section 2(1) of the Acts as meaning:

*"(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,*

*(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,*

*(c) the malfunction, malformation or disfigurement of a part of a person's body,*

*(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or*

*(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour;"*

I am satisfied that the Complainant has a nut allergy, which can cause anaphylaxis. I note from previous decisions from the Equality Tribunal and the Labour Court where similar conditions have deemed to qualify as a disability within the meaning of Section 2 of the Acts, in particular, I note the decision in *Parents on behalf of their son v Board of Management of A Gaelscoil DEC – S2016-053*, which similarly found that anaphylaxis is a disability within the meaning of the Acts. I note that the disability was not contested by the Respondent.



Neither is it disputed that the Respondent is an educational establishment within the meanings of Section 7(1) of the Acts and that the Board of Management of it is the correct Respondent.

Section 7(2) of the Acts states: *(2) An educational establishment shall not discriminate in relation to—*  
*(a) the admission or the terms or conditions of admission of a person as a student to the establishment,*  
*(b) the access of a student to any course, facility or benefit provided by the establishment,*  
*(c) any other term or condition of participation in the establishment by a student, or*  
*(d) the expulsion of a student from the establishment or any other sanction against the student.*

I will now consider whether or not the alleged treatment amounted to direct discrimination within the meaning of Section 3 of the Equal Status Acts. Section 3(1) of the Acts provide:

*“(1) For the purposes of this Act discrimination shall be taken to occur –*  
*(a) where a person is treated less favourably than another person is, has been or would be treated in a comparable situation on any of the grounds specified in subsection (2) or, if appropriate, subsection (3B), in this Act referred to as the ‘discriminatory grounds’.*

Section 3(2) of the Acts provide that:

*“(2) As between any two persons, the discriminatory grounds (and the description of those grounds for the purposes of this Act) are:*

*[...]*

*(g) that one is a person with a disability and the other either is not or is a person with a different disability (the “disability ground”),”*

The Complainant claims that she was discriminated against on the grounds of her disability and that the Respondent failed to provide her with reasonable accommodation as a person with a disability in accordance with the provisions of Section 4 of the Acts.

The onus of establishing a prima facie case rests with the Complainant. As noted in *Michell v. Southern Health Board [2001] ELR 201*, “A claimant must prove, on the balance of probabilities the primary facts on which they rely in seeking to raise a presumption of unlawful discrimination”. Therefore, in a case of direct discrimination for the Complainant to establish a prima facie case I am satisfied that she must establish a set of facts that raise a presumption of discrimination. I first note that she is covered by the relevant ground. That is not in dispute. Secondly, the facts adduced need to demonstrate that she was afforded specific treatment by the Respondent and finally, that treatment was less favourable than the treatment afforded to the other students who did not have her disability.

I note that firstly the Respondent asked for the Complainant to consider not going on the trip because of her disability and secondly, that she could only go when a family member would travel with her and finally, that because of a series of incidents that occurred with the host family prior to going on the trip that even if a family member was to accompany the Complainant that the opportunity was lost.

I have heard from the Respondent, and I can acknowledge their expressed bona fides when they said that they acted in good faith in the interest of all parties when they raised concerns about the Complainant going on the trip.

I note that the Complainant claims that the conditions were a direct consequence of her disability. I note that the care plan condition was imposed on the Respondent by its insurer. However, there were no other obligations or conditions placed on the Complainant at that point.

The Respondent made a decision that because of the Complainant’s disability and its complex management, it therefore did not wish her to go on the trip without a family member present. This, it said, was because of the possible obligations



and responsibilities placed on the Respondent's staff traveling with the party should an emergency occur.

The Complainant's family said they were unable to have a family member travel as a close relative was terminally ill and was dying in and around that time.

I have heard the evidence from both sides, and I find the following to be matters of fact.

1. that anaphylaxis is potentially a life-threatening condition,
2. the trip to France was a part of the exercise that was available to the students of the TY year on a first come first served basis. The Complainant met the criteria.
3. the insurance company did not seek any additional requirements other than a care plan,
4. the Complainant had travelled abroad multiple times,
5. the Complainant had travelled abroad with the school on another event without any difficulties,
6. the Complainant was in her middle teens and was well aware of her condition and its management.

I am satisfied that the Respondent felt that there was an added responsibility on the teaching staff that were travelling with the 20 Students to France. I note the travelling teachers themselves had raised concerns and were not happy with the possible consequences should the Complainant have an allergic reaction. I note that the Respondent considered this a serious factor and decided that it would explore the options around the Complainant traveling, including placing an additional requirement for a family member to accompany her so to be close by to take responsibility should something occur.

Finally, I note the Respondent decided that notwithstanding the possible option of a family travelling with the Complainant, that option effectively was removed from the Complainant on the 20 March 2017 when a problem occurred with one of the host families. Here the Complainant's family were advised that the option was now not an option any longer as it would be considered "too risky".

The question arises here as to the possibility of something happening in this situation. I am mindful that a huge responsibility was placed on the teachers as they were travelling away for 11 days with 20 students. This cannot be understated. I would expect that each and every day there was the possibility that something *could* go wrong with any of the travelling party. However, it would appear that the sole focus was that there was a probability that something *would* happen to the Complainant because of her disability.

I am satisfied that the additional precondition to have a family member accompany the Complainant on the school trip was because of her disability and this comprehensively establishes the prima facie case of direct discrimination on the grounds of her disability. I am satisfied that this point was not up for negotiation as far as the school was concerned. Notwithstanding, I am satisfied that on 20 March the Respondent chose to exclude the Complainant entirely from the trip because one of the families on the French side of the exchange might not be fully involved in the exchange, and as the parents were working late, it was deemed "*too risky*". I note that the Respondent said that this family was the one 'matched' with the Complainant and therefore she lost out. The option of a family member accompanying the Complainant was effectively withdrawn.

I am not satisfied that the Respondent's rebuttal in either situation is sufficient. Exploring the options with the Complainant and her parents is to be commended in the context of the situation facing the school and the genuine concern for the Complainant. However, deciding to stop the Complainant travelling without that precondition of a family member accompanying her because of her disability is discriminatory and unreasonable in the circumstances.

The decision by the Respondent on the 20 March brings the Complainant's hope of going on the trip to an end. The problem with the family on the French side of the exchange appears in the Respondent's actions to have resolved the



problem it had with the Complainant possibly travelling unaccompanied. The question that this poses is why the Complainant had to lose out, notwithstanding the claim that the students were 'matched', that is surely a matter of administration and can be reviewed quickly and changes made.

Based on the foregoing, I find from the facts adduced that the Respondent breached Section 7(2)(b) and (c) of the Acts in that it restricted and ultimately prevented the Complainant's participation in a school student exchange programme, that was part of the schools activities and was generally open to all the other school children on the basis that she had a nut allergy and it feared for the possible consequences. I find that it has failed to rebut the allegations.

Reasonable Accommodation In relation to reasonable accommodation I note Section 4 of the Acts reads,

*"4.—(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.*

*(2) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question.*

*(3) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers does not constitute discrimination if, by virtue of another provision of this Act, a refusal or failure to provide the service in question to that person would not constitute discrimination.*

*(4) Where a person has a disability that, in the circumstances, could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination."*

The Complainant claims that her case is one of discrimination on the ground of disability and includes the Respondent's failure to provide her with reasonable accommodation to attend the school trip; that other options were not explored to assist her travel and partake in the exchange programme.

I note that the Respondent said that it denies that it failed to provide the Complainant with reasonable accommodation, that the option of a family member travelling with the Complainant was always an option that was open, and it would have no problem allowing the Complainant travel should a family member accompany her in case of an emergency.

I note that the Respondent has said that it wished to rely upon the provisions of Section 4 of the Act, which allows for a defence against discrimination in certain instances.

I note that the Respondent said that it was fully aware of the serious nature of the Complainant's condition and the need for complex management of same. The Respondent said that it was concerned with the duration of the trip and staying with families. It was not in a position to provide the Complainant with the necessary level of care as it would at school.

The Respondent said that is why it imposed the additional requirement of a family member travelling with the Complainant.

Having considered all the evidence I have not identified what accommodation the Complainant would require in order to facilitate her participation in the school trip. From the evidence adduced there was no special treatment or facilities identified, where without such special treatment or facilities it would be impossible or unduly difficult for the Complainant to travel. I am satisfied that the Complainant was more than capable of attending the trip, just like any of the other TY Students. I cannot find anything that was required for the Complainant to take the trip other than a condition placed on her by the Respondent, firstly claiming that she could not travel without a family member accompanying her and then deciding that as one French family was unable to host one of the Irish travelling students and the Complainant was



advised that it was her allocated family and therefore she could not go. To suggest, that reasonable accommodation was required is moot. All the Complainant required was permission from the school to travel.

Accordingly, I do not find that the Respondent has failed to provide reasonable accommodation, as no accommodation was required for the Complainant to travel.

#### Other matters

Other matters were raised on the day of the hearing which were not indicated in the original complaint form, nor was the notification form ES2 or the submission from the Complainant. I am satisfied therefore that none of these are properly before me for consideration in this case.

#### Decision:

Section 79 of the Employment Equality Acts, 1998 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 82 of the Act.

Section 25 of the Equal Status Acts, 2000 – 2015 requires that I make a decision in relation to the complaint in accordance with the relevant redress provisions under section 27 of that Act.

**CA-00013978-001 - Complaint seeking adjudication by the Workplace Relations Commission under section 77 of the Employment Equality Act, 1998**

I decide that the complaint under the Employment Equality Act is not well founded and fails.

**CA-00013978-002 - Complaint seeking adjudication by the Workplace Relations Commission under Section 21 Equal Status Act, 2000**

In accordance with Section 25(4) of the Equal Status Acts, I conclude this investigation and issue the following decision:

(1) I do not find that the Respondent has failed to provide reasonable accommodation under Section 4 of the Equal Status Acts, as no accommodation was required for the Complainant to travel.

(2) I find that the Complainant has established a prima facie case of discrimination on the disability ground in terms of Sections 3(1), 3(2)(g) and 7 of the Equal Status Acts and that the Respondent has failed to succeed in rebutting the inference of discrimination.

(3) The maximum redress that can be awarded under the Acts is €15,000. In the circumstances, I order the Respondent pay the Complainant €3,500 (three thousand five hundred euro) compensation for the direct discrimination on the grounds of disability.

In considering redress, I am cognisant of the serious predicament the Respondent found itself in. I am satisfied that the Respondent's decision was not predicated on malice. However, it directly discriminated against the Complainant within the definition of the Acts and the Complainant could not take part in a school activity, and she has articulated the effect that had on her at the time. I deem the redress ordered is appropriate and fair in the set of circumstances presenting.

**Dated:** 11<sup>th</sup> November 2019 **Workplace Relations Commission Adjudication Officer:** James Kelly **Key Words:**

Equal Status Acts – direct discrimination – disability – compensation.