

Equal Status Acts 2000-2015 DEC – S2016-053 Parents on behalf of their son

(represented by Gary Mulchrone, Gilvarry & Associates Solicitors) versus Board of Management of A Gaelscoil

(represented by Paul McDonald, AJP McDonald Solicitors) File reference: et-153962-es-15 Date of issue: 7th September 2016

Keywords: Equal Status Acts, Disability, Failure to provide reasonable accommodation, Harassment, Victimisation, FDEIA, Anaphylaxis

Dispute

1.1 The case concerns a complaint by parents on behalf of their son against a Gaelscoil regarding the temporary refusal to allow an emergency medical kit in the school. They claim is that he was discriminated on the ground of disability by failure to provide reasonable accommodation as defined in Section 4 of the Equal Status Acts 2000 to 2015 [hereinafter referred to as 'the Acts']. They also claim that he was harassed and victimised on the same ground. The decision is anonymised at the request of the parents because the child is a minor.

1.2 The complaint was referred under the Acts to the Director of the Equality Tribunal on 2nd February 2015. On 24th August 2015, in accordance with her powers under the Acts, the case was delegated by the Acting Director to me, Orlaith Mannion, an Equality Officer, for investigation, hearing and decision and for the exercise of other relevant functions of the Director under the Acts. On this date, my investigation commenced. Submissions were received from both parties and a hearing was held on 21st September 2015 as required by Section 79(1) of the Acts. Significant amounts of correspondence continued after the hearing.

1.3 This decision is issued by me following the establishment of the Workplace Relations Commission on 1st October 2015, as an Adjudication Officer who was an Equality Officer prior to 1st October 2015, in accordance with section 84(3) of the Workplace Relations Act 2015.

Summary of the complainant's case

2.1 The complainant was in Second Class (Rang a do) at the relevant Gaelscoil during the academic year 2014-2015. He suffers from Wheat-dependent Exercise Induced Anaphylaxis that is a triggering of a severe allergic reaction after ingestion of wheat-based foods when followed by physical exercise. Therefore, he must have access to an emergency anaphylaxis medical kit, containing adrenaline auto-injectors, inhaler and anti-histamines. The complainant submits that the respondent refused to accept the complainant's emergency medical kit on the school premises for nine schooldays thus denying him reasonable accommodation.

2.2 The complainant presented with allergic reactions since he was an infant. His condition requires careful management as if the anaphylaxis progresses rapidly it could lead to the death of the victim. Prior to the complainant starting Junior Infants (Naíonáin Bheaga) in 2011 his parents formally notified the Principal and Board of Management of his medical requirements – Ventolin inhaler, anti-histamine oral medicine as well as a Jext pen (pre-loaded adrenaline injector) in cases of severe allergic reaction. The parents also arranged for the Resuscitation Officer from the local hospital to attend the school to give appropriate training in the administration of the Jext pen. It is not difficult for an adult to administer. The parents undertook to replace the medicine when it expires.

2.3 In fairness to the school, this kit was kept in the school office without difficulty for three academic years. The parents also supplied the school with treats for their son in case birthday cake etc. was being handed out. The boy was happy at school there and there were no insurmountable problems.

2.4 At the start of the 2013-2014 academic year (Rang a hAon), the parents were handed an indemnity form where they were to required to agree to see whether one of the three members of staff trained to administer the emergency medicine

were working that day. The parents maintain that this was very onerous as not every member of staff is always standing outside. The parents questioned if none of the three teachers were there for the full day, were they expected to bring their son home in those circumstances. Were the parents expected to interrogate the three teachers every school day on whether they are on the premises for all of the school day? This indemnity was given to the parents without any consultation. It is submitted as evidence. It states that 'in the event that a teacher administers (sic) the above to our son we the parents hereby agree to indemnify and keep indemnified the Board, its servants and agents including without prejudice to the generality the foregoing the said pupil's Class Teacher/Acting Principal and/or the Principal of the said school from and against all claims both present and futures arising from the administration or failure to administer the said medicines"

2.5 The complainant's parents suggested that the school could text if all three teachers were absent on a particular day. The Principal agreed to raise the issue with the Board of Management meeting on 7th November 2013. On 11th November 2013 the Chairperson of the Board of Management wrote to the parents:

"It is the view of the Board that it is a matter for you, as parents to take the necessary steps to satisfy yourselves the relevant teachers who have volunteered to administer the medication in this case an adrenaline injection in the event of an allergic reaction are in attendance and available in school on any given day or occasion.

It is also the view of the Board that it is a matter for you, as parents, to make the necessary alternative arrangements should it be that none of the listed volunteering teachers are in attendance or available in school on any given day or occasion'. The school will endeavour to accommodate you in every reasonable way in the unlikely event that none of the volunteering teachers are not in attendance/available.

The Board has also been advised that [complainant] is involved in a number of after-school activities which take place on the school grounds. The Board have expressed their anxiety that the necessary arrangements/procedures are put in place by you, as parents in relation to the administration of medicine/injection on those occasions.

Finally and for the sake of absolute clarity the Board must insist on a presentation by a skilled medical practitioner to instruct and advise the volunteering teachers on the administration of medicine/injection as the case may be. This is a fundamental pre-requisite for the volunteering teachers.

It is hoped that this clarifies matters for you and they now can now return relevant authority and indemnity duly signed."

The parents replied on 28th November 2013 drawing attention to the 'Managing Chronic Health Conditions in Schools' which was compiled in conjunction with, inter alia, Anaphylaxis Ireland.[1] They pointed out where the indemnity differs from this policy and suggested the school contact Anaphylaxis Ireland directly.

2.6 To be fair to the Board of Management, they agreed to amend the policy and the Principal or Acting Principal would agree to contact the parents in the unlikely event that all three members of staff were absent. The relevant forms were signed and countersigned by 8th January 2014.

2.7 The crisis point did not happen until the following academic year. On the first morning of the 2014-2015 school year (Rang a do) the complainant's father handed the medical kit to the Vice Principal who was also his son's teacher that year. By agreement with the school the complainant's father (who works as a photographer) was taking photographs of the students on their first day back at school. At approximately 11.15 the Principal approached him saying the school could not accept the kit. The reason cited that the relevant staff had not received up-to-date training. At the hearing the complainant submitted documentary evidence to show that three staff members (including the Principal and Vice Principal) had received specific training from the Public Health Nurse the previous January. The complainant produced documentary evidence to show this training is valid for a year.

2.8 In shock, the complainant's father accepted the kit back but approached a member of the Board of Management to

express his dismay. That afternoon the complainant's mother rang the Department of Education who referred the mother to the school patron – An Foras Patrunachta.

2.9 The parents submit that they were surprised at the school's reaction as following a request for same on 19th June, the parents sent a letter seeking permission for the 2014-2015 year for the school staff to administer emergency medication to their son if necessary. On 20th August the School Principal wrote asking the parents to arrange training for the relevant teachers on 27th August. Because both the Public Health Nurse and the complainant's GP were on Annual Leave etc, the parents were unable to do so in this short time period. The complainant's mother wrote back on 27th August stating that it should be the Board of Management who arranges training. This is what is stated in the INTO document 'Managing Chronic Health Conditions in Schools'. However the letter also stated that the parents had contacted the Public Health Nurse and the PHN had said for the school to contact her directly to arrange a mutually convenient time. The complainant's mother also submits that the Public Health Nurse said that the school should have contacted her directly in June to arrange for training before school term started if that is why they wanted. However the training is valid for a year anyway.

2.10 On 29th August 2014 (second day of academic year) the complainant wanted to go to school. His parents were reticent as the emergency kit would not be in the school. They gave him anti-histamine and his father did not work that day and stayed outside the school in case anything went wrong. The parents knew that the staff were due to receive training that afternoon so they assumed that the school would accept the emergency kit the following Monday (1st September).

2.11 Due to a family bereavement the complainant was absent from school from 1st September to 4th September. When the complainant's father presented the emergency medical kit to the Vice Principal on Friday 5th September she refused to accept it. This time the reason cited was the Board of Management was updating its policies. Having not worked for the previous week, the complainant's father could not justify taking an other day off work to hover around the school so he kept his son away from school that day.

2.12 The complainant's parents gave direct evidence that this incident upset their son as he had his school uniform on and was at the school. He wanted to see his friends as he had been at a funeral the previous three days. His parents say he remained upset for the rest of the weekend.

2.13 On Monday 8th September the Vice Principal again refused to accept the emergency kit. The School Principal came on the scene reiterated this position. The complainant's mother pointed out that this was unreasonable as it had taken four months to agree the previous policy but the emergency kit was still kept in the school. The Principal replied that it was the mother who had asked for the letter of indemnity to be changed in the final paragraph of her letter of 29th August:

"Finally the Board of Management should revise line 8 of their letter of indemnity to reflect that is they (the Board of Management) who will provide to the teachers a presentation by a skilled medical practitioner on the administering of the emergency medicines. We await the Board of Management's revised letter."

2.14 The complainant submits that this is only one word and it should not take six working days to sort out. The parents argue that the Principal set up a chain of events to prevent their son attending school. On 8th September the parents sought the support of the complainant's GP. The GP phoned the School Principal that day. In that phone call, according to the GP, the School Principal said that the school would only accept the Jext pen – i.e. not the anti-histamine tablets or the Ventolin inhaler. Panicked, the parents contacted the Anaphylaxis Ireland as asthma is one the symptoms of anaphylactic shock and therefore the complainant's inhaler is an essential part of his treatment in emergencies.

2.15 The following day the school again refused to take the emergency kit. However, the Principal did give the complainant's father the revised policy document for both parents to sign. Realising the seriousness of the situation, Anaphylaxis Ireland contacted the school directly and informed the Principal that she cannot pick and choose what parts of the emergency kit

that she decides is necessary for the child's safety. Presumably chastened by this conversation, the Principal asked the complainant's GP for a letter citing the prescribed medicines. This would always have been in the complainant's healthcare plan.

2.16 The parents point out that contrary to what is recommend in the Managing Chronic Conditions (cited in Paragraph 2.4) the complainant's emergency kit in stored in a locked filing cabinet and only three members of staff are trained in the using a Jext pen. As an example of the disadvantages this the school went to watch the Irish rugby team train. As none of the trained staff members were going on this trip, the complainant's father had to accompany them with his son's emergency medical kit.

2.17 It is alleged on behalf of the complainant that he was treated less favourably than a person without a disability or a different disability. His comparator is his sister who also attends the school. She does not have this disability. They argue reasonable accommodation was denied to the complainant and he was harassed because of his disability. The complainant cites Mr X v Board of Management of a National School[2] where the Equality Officer found that the complainant had established a prima facie case of discrimination on the grounds of disability.

Summary of the respondent's case

3.1 The respondent points out that the emergency medical kit was only absent from the school for nine schooldays. The complainant was absent due to a family bereavement for four of those days. His parents only kept him out of school for one other day.

3.2 The respondent argues that the correct comparator should be a student with a similar disability. There are four other families with children with similar disabilities. They were all treated in the exactly the same way and were asked to arrange for an appropriate medical practitioner to address the staff who volunteered to administer the medication and to sign an appropriate indemnity form. The respondent maintains that the other four families had no difficulty with the requirements set out by the Board of Management.

3.3 The respondent submits that it was not impossible or unduly difficult for the complainant to attend school. The respondent argues that the Principal and Board of Management have acted in good faith at all times. A teacher cannot be compelled to administer medication to a student. In this school, as in most schools, teachers do volunteer to administer medication in certain circumstances. It is only reasonable that in volunteering to administer medication a teacher would seek to avoid being sued should anything go wrong in the administration of same. They argue that similarly the Board of Management who consents to the teacher administering the medication are quite correct in seeking to protect itself against an action taken against it in such circumstances. It cites the Department of Education Information Manual for Primary School Boards of Management:

" The position is that either the parents of the child should make themselves available to administer medication as required or where they wish the staff in the school to administer it, they should indemnify the school. *(In this way the rights of the child and the parents and the interests of the school are protected in a balanced way).*"[3]

The respondent also cited the INTO publication 'Guidance for Teachers: A Professional Response to Changing Times:

ADMINISTRATION OF MEDICINES IN SCHOOLS(1) INTRODUCTION

There has been increasing concern in recent years with regard to the extent to which teachers should become involved in the administration of various forms of medication to pupils. While teachers in schools act "in loco parentis", there is no obligation on teachers to either administer medicines

regularly or to supervise children taking them. It should not create a problem however, if teachers are willing, have the permission of the Board of Management, have the written approval of parents and have been who are ill, but ultimately would not do so if this in any way jeopardised the safety and welfare of any child in their care. Therefore, it is important that areas of responsibility are clarified. The purpose of this advice is to give clear guidance to members about situations where it is not appropriate for them to administer medication to pupils and to indicate the limitations of any "requirements" which may be made of teachers.

Teachers of course, will always be prepared to help when an accident or emergency situation arises, where for example, a child has a serious accident and parents need to be contacted or an ambulance called. This advice does not seek to clarify the responsibilities of school staff in such circumstances, but recommends that procedures to deal with such

emergency situations are clear and made known to all staff and parents. **TEACHERS' PROFESSIONAL DUTY**

Teachers have a professional duty to safeguard the health and safety of pupils both when they are authorised to be on the school premises and when they are engaged in authorised school activities elsewhere. This does not imply a duty upon teachers personally to undertake the administration of medicines. Indeed, it is important that teachers do not take responsibility for administration of any medication which, if administered incorrectly or for other reasons, could have a damaging effect on the health of a child.

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Administration of Medicines in School", which was very helpful to us in developing our own guidelines regarding same. 14
CHILDREN WITH LONG TERM HEALTH PROBLEMS It is recognised that it is desirable for children with long term recurring health problems, such as asthma, epilepsy, diabetes and anaphylaxis to be accommodated within school in order that they can continue their

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arrangements for administration of medicines must be made. Parents should be encouraged to provide maximum support and assistance in helping the school accommodate the pupil. This would include measures such as self-administration (where necessary and only after approval from a GP), or under parental supervision.

TEACHERS AND ADMINISTRATION OF MEDICINES IN SCHOOLS

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under strictly controlled guidelines, fully confident that the administration will be safe. It is wise to limit this willingness to emergency situations only. A teacher who does take responsibility for administering medicines takes on a heavy legal duty of care to discharge the responsibility correctly. Every reasonable precaution must be taken.

Clear instructions about medicines requiring regular administration must be obtained and strictly followed. The INTO advises that:-

- (A) the parent(s) of the pupil concerned should write to the Board of Management requesting the Board to authorise a member of the teaching staff to administer the medication.
- (B) the request should also contain written instructions of the procedure to be followed in administering the medication.
- (C) the Board of Management, having considered the matter, may authorise a teacher to administer medication to a pupil. If the teacher is so authorised she/he should be properly instructed by the Board of Management.
- (D) a teacher should not administer medication without the specific authorisation of the Board.
- (E) in administering medication to pupils, teachers should exercise the standard of care of a reasonable and prudent parent.
- (F) the Board of Management should inform the school's insurers 15
- (G) the Board of Management should seek an indemnity from the parent(s) in respect of any liability that may arise regarding the administration of the medication.

Arrangements should also be made by the Board of Management for the safe storage of medication and procedures for the administration of medication in the event of the authorised teachers absence. It is the parents responsibility to check each morning whether or not the authorised teacher is in school unless an alternative arrangement is made locally.

and appropriate to relieve extreme distress or prevent further and otherwise irreparable harm. Qualified medical treatment should be secured in emergencies at the earliest opportunity.

Where possible schools should request that medical practitioners would arrange times for medication so that they don't coincide with school. It is important that Boards of Management request parents to ensure that teachers be made aware in writing of any medical condition suffered by any children in their class. Children who are epileptics or diabetics or who are prone to anaphylactic shock syndrome may have an attack at any time and it is vital, therefore, to identify the symptoms in order that treatment can be given by an appropriate person if necessary.

Where teachers have been given medication to administer in cases of emergency e.g. adrenaline in case of anaphylaxis, this medication should be the smallest dose possible to ensure recovery until a medical expert can take over. At no time should an emergency dose be such that it could harm the child if inappropriately administered. Confirmation of this should be obtained in writing from the medical practitioner responsible for the child before a school would agree to hold such life saving medication in its care. Where possible, injection needles should not be held on the premises and epipen type injections should be used.

Where children are suffering from life threatening conditions such as the above, parents should outline clearly in writing, what can and can't be done in a particular emergency situation, with particular reference to what may be a risk to the child.

ARRANGEMENTS IN SCHOOL Wherever possible, parents should be asked to make arrangements to come into school or for pupils to return home at lunchtime for medication. The

Board of Management should give maximum assistance in facilitating such operate:-

(A) Written details from the parent to the Board of Management giving

the name of the child; name and dose of medication; whether the

child should be responsible for his or her own medication; the

circumstances in which medication is to be given by the teacher and

consent for it to be given; when the parent is to be notified and where he or she can be contacted.

(B) Written advice to the Board of Management on the storage of

medication, including both pharmaceutical requirements (e.g.

refrigeration if necessary) and ways of ensuring access for the child.

(C) Where permission has been given by the Board of Management for

the administration of medicine the smallest possible dose should be

brought to the school, preferably by the parent, with clear written

instructions for administration, giving the name of the pupil. Glass containers are unsuitable to be carried by pupils.

(Note: It is not practicable to bring one measured dose of a liquid

medicine; adhesion of the liquid to the container results in the dose being less than sufficient).

(D) The medicine should not be kept by the pupil but in a locked

cupboard out of reach of pupils. Certain medicines, however, such as

inhalers used by asthmatic children, must be made readily accessible

at all times of the school day. The means by which this is done would remain a matter for teachers' professional judgement.

(E) The medicine should be self-administered if possible, under the

supervision of an adult. This may be the principal or someone acting

with the principal's authority. It would be advisable to keep a written record of the date and time of the administration.

Teachers should be aware of the Infection Control Guidelines and schools

should notify parents when infectious diseases are in the school as children

with an immune deficiency may die as a result of exposure to such

3.4 When the complainant started in the school the parents complied with the school's requirements without any difficulty.

Three parents objected to the visual check for the relevant teachers even though that is what is specified in the INTO

Guidelines –see G above. However, on foot of representations from the parents the Board of Management changed its policy

and confirmed that the school would be responsible for ensuring the presence of at least one of the teachers.

3.5 The following academic year, the parents took issue with the indemnity form because it stipulated that the parents

should provide access to training by an expert to the teachers who may volunteer to administer the medication. They did

not sign the indemnity form. That is why the medical kit was not kept in the school for those few days. The respondent

submits that it is unreasonable for parents to expect teachers to administer medicine without an indemnity. The respondent

reiterates that only the complainant's parents took issue with the indemnity. The other parents (of children susceptible to

anaphylaxis) signed it without any question.

Conclusions of the Equality Officer

4.1 . 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 s(he) 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.

Dispute of facts

4.2 In this case where there is significant conflict of evidence, I will focus first on what is agreed between both parties. The complainant and his sister were (and continue to be) happy at school there. The respondent also agrees that the parents notified them of his condition prior to starting school and are conscientious about keeping the school informed about his condition, minding his emergency medical kit e.g. making sure medicines are in date etc. The School Principal gave direct evidence that there was an altercation between the complainant's mother and his teacher in Senior Infants over 'treats' that he was allowed. His teacher was in tears by the end of the conversation. I find this incident (regrettably) created hostility from the staff of the school towards the complainant's parents.

4.3 The school has grown from 7 pupils on its establishment to over 200 now. The School Principal is correctly proud of her record in leading the school through this change. She wished to exercise her authority on this issue and I believe this had a major impact on what subsequently transpired.

4.4 Just before the complainant commenced First Class (Rang a hAon), his parents were sent an indemnity to sign. This was a new departure and there was no consultation with the parents beforehand. An indemnity is a contract and the parents were correct to carefully consider it before signing it. It is based on the 1996 INTO guidelines (See Paragraph 3.3) However, these guidelines were superseded by the excellent 'Managing Chronic Conditions in Schools' (See Paragraph 2.4) This resource pack was sent to every school in Ireland in 2011. It is published along with a very practical eight minute video on the INTO website. An article on same was included in the September 2011 edition of 'InTouch' (INTO magazine). I will not speculate as to whether the school deliberately ignored the 2011 guidelines in favour of the more antiquated 1996 ones (which precede the Equal Status Acts) or whether they were not aware of them. However, neither proposition assists their case especially in a situation where there were three other families with children susceptible to anaphylaxis in the school.

4.5 In fairness to the school, (after a few months) they dropped the requirement for the parents to check whether the three staff members trained to administer the complainant's emergency medicine would be there for the full school day. There were delays by both the parents and the Board of Management and the indemnity was not signed until 8th January.

4.6 The school were remiss in only sending the form requesting the parents to organise training a few days before school started. The Public Health Nurse rightly said that the practical solution was for the school to contact her directly to arrange refresher training on the administering of medicine. This is what actually happened. The parents changed one word on the indemnity from 'parents' to 'school' to reflect the reality that it was the school that organised training for their staff. For the school to engage in a stand-off where they would not retain life-saving medication for nine school days - over one word - actually frightens me. Surely some compromise could have been reached where the emergency kit was held pending a meeting of the Board of Management. Or the Principal (with almost 20 years of experience) could have made an executive decision that the single amendment could be accommodated. The school should regard themselves as fortunate that they are not defending proceedings in the Superior Courts or, worse, giving evidence in the Coroner's Court. Had his parents not detained the complainant at home for a day, his father sit in his car outside the school for another day and dosed him up on anti-histamines on the other days; that is what the Board of Management (whether the indemnity was signed or not signed) could have been facing.

4.7 Another worrying aspect is that the complainant's GP and Anaphylaxis Ireland had to intervene to inform the Principal that the staff should follow the emergency care plan i.e. if the complainant develops symptoms of anaphylaxis the trained staff member does not have carte blanche to administer the anapen and not bother with the ventilator. A teacher is in loco

parentis during the schoolday and therefore has a duty of reasonable care to all students that she is supervising including those with disabilities.

4.8 Regarding the school's assertion that no other parent was uncomfortable with the indemnity, no direct evidence was adduced on this matter so I cannot satisfy myself whether or not this is the case. However, for the avoidance of doubt, neither the request by the parents not to conduct checks every morning to see whether the trained staff were available for the schoolday nor the request for the indemnity to be amended were sufficient reasons to deny reasonable accommodation.

The Law

4.9 I am satisfied that anaphylaxis is a disability within the meaning of Section 2 of the Acts. Neither is it disputed that the Gaelscoil is an educational establishment within the meanings of Section 7 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.

4.10 I am satisfied that the respondent breached 7(2) (a), (b) and (c) of the Acts in that it restricted the admission, access and participation of the complainant for nine schooldays. It bears repeating that anaphylaxis is potentially a life-threatening condition. I will draw attention to attention to Section 9(m) of the Education Act 1998 which states one of the functions of a school is to establish and maintain an admission policy which provides for maximum accessibility to the school.

4.11 It is worthwhile quoting all of Section 4 of the Acts:

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.

(5) This section is without prejudice to the provisions of sections 7(2)(a), 9(a) and 15(2)(g) of the Education Act, 1998, in so far as they relate to the functions of the Minister for Education and Science,

recognised schools and boards of management in regard to students with a disability. (6) In this section—

“provider of a service” means— (a) the person disposing of goods in respect of which section 5(1) applies,

(b) the person responsible for providing a service in respect of which section 5(1) applies,

(c) the person disposing of any estate or interest in premises in respect of which section 6(1)(a) applies,

(d) the person responsible for the provision of accommodation or any related services or amenities in respect of which

section 6(1)(c) applies,

(e) an educational establishment within the meaning of subsection (1) of section 7 in relation to any of the matters referred to in subsection (2) of that section, or

(f) a club within the meaning of section 8(1) in respect of admission to membership or a service offered to its members, as the case may be, and “service” shall be construed accordingly;

“providing”, in relation to the special treatment or facilities to which subsection (1) refers, includes making provision for or allowing such treatment or facilities, and cognate words shall be construed accordingly. (my emphasis).

This section requires an educational establishment to do all that is reasonable to accommodate the needs of a person with a disability. It does not say educational needs – it simply says needs. Everyone has a right to an education[5]. The complainant’s emergency medical kit must be near him at all times. I accept that it is an onerous duty on teachers to administer emergency medication – most people do not like the idea of giving an injection. However, even if administered in error, adrenaline does not have a dangerous effect on a person. It must be borne in mind that an eight year old child cannot be expected to self-administer while in anaphylactic shock. In an emergency situation in school, there is not time to ring the parents and ask them to administer the adrenaline injector. Therefore the Board of Management is obliged to reasonably accommodate the complainant by retaining his emergency medical kit during the schoolday and ensuring staff are trained in administering same.

4.12 I accept the respondent’s contention that it was not impossible for the complainant to access education. However it was unduly difficult for him for those nine days and therefore a breach of Section 4 of the Acts occurred.

4.13 Considering all of the above, I am satisfied that the respondent discriminated against the complainant on the ground of disability by not (temporarily) providing reasonable accommodation. Neither would it be more than nominal cost as the Public Health Nurse and the GP provide this training for free. Therefore the Board of Management cannot avail of the defence in Section 4(2).

Harassment 4.8 Section 11 defines harassment under the Acts:

In this section—

(a) (i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, being conduct which in either case has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

It is to the credit of the parents and the school that the complainant was protected from the worst aspects of the dispute. In common with most eight year olds I imagine he was not delighted with the idea of his father sitting in a car outside the schoolgate all day. I can empathise with his desire to play with friends after not seeing them for four days because of a funeral. However, on the whole, insufficient evidence has been adduced for me to make a finding of harassment that is clearly linked to him (as opposed to his parents) under the Acts. Therefore, the complainant has failed to establish a prima facie case of harassment within the meaning of the Acts.

Victimisation 4.9 The ground of victimisation is defined in Section 3 of the Acts:

- (j) that one— (i) has in good faith applied for any determination or redress provided for in Part II or III, (ii) has attended as a witness before the Authority, the Director or a court in connection with any inquiry or proceedings under this Act, (iii) has given evidence in any criminal proceedings under this Act, (iv) has opposed by lawful means an act which is unlawful under this Act, or (v) has given notice of an intention to take any of the actions specified in subparagraphs (i) to (iv), and the other has not (the “victimisation ground”).

The colloquial meaning of victimisation differs from the statutory definition above. No evidence was presented to me of the complainant (as opposed to his parents) being treated less favourably subsequent to stating an intention of making a complaint under the Equal Status Acts, making a making a complaint under the Acts or opposing something unlawful under the Acts. Therefore his complaint of victimisation fails.

Decision 5.1 In accordance with Section 25(4) of these Acts, I conclude this investigation and issue the following decision:

- (i) that the complainant has established a prima facie case of discrimination on the grounds of disability in terms of both Section 4 and Section 7 of the Acts and this has not been rebutted by the respondent.
(ii) That the complainant was not harassed within the meaning of the Acts
(iii) That the complainant was not victimised within the meaning of the Acts

5.2 The maximum I can award (as this case was lodged subsequent to 3rd February 2014 when the monetary limits were increased as per Courts & Civil Law (Miscellaneous Provisions Act 2013) is €15,000. In the circumstances, I award the complainant €9,000 for the discrimination on the grounds of disability. In considering redress, I am cognisant that the complainant was only denied reasonable accommodation for nine days. However, it bears repeating that his emergency medical kit contained life-saving medication so it was a serious breach of the Acts.

5.3 I further order that the respondent redraft their policy regarding storage of emergency medical kits to ensure that they are in compliance with these Acts. I suggest that they engage with Anaphylaxis Ireland in relation to this. I am not an expert on the condition so I do not wish to be overly prescriptive. However, that organization (or somebody nominated by them) can advise on the correct place to store the kits, how many staff members should be trained etc.

_____ **Orlaith Mannion** Adjudication Officer/Equality Officer Footnotes

[1]

<http://www.into.ie/ROI/ManagingChronicHealthConditionsatSchool/ManagingChronicHealthConditionsatSchoolResourcePack.pdf>

[2] Equality Tribunal Decision No. DEC-S2014-024

[3] <http://www.gaelscoileanna.ie/assets/bom-information-manual-des-20071.pdf> p.32

[4] <https://www.into.ie/ROI/Publications/PublicationsPre2000/GuidTeachersChangTimes.pdf> p. 14 to 16.

[5] Article 26 of UN Declaration of Human Rights <http://www.un.org/en/universal-declaration-human-rights/index.html>