

Excluding pupil with ADHD for having sex on school premises was not discriminatory

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A pupil's Attention Deficit Hyperactivity Disorder was not a "disability", so her school's decision to exclude her as a result of her having sex on school premises could not be discriminatory on grounds of disability.

M was a female boarding school pupil who suffered with ADHD. In 2013, a teacher caught M having sex with a male pupil in a classroom. The school decided to exclude M, though the principal advised M's mother that it might be best to withdraw M from school to avoid an expulsion going on her disciplinary record. M's mother claimed that the exclusion and suggested withdrawal from school amounted to discrimination on grounds of M's disability, namely her ADHD, which her mother said affected her decision-making skills.

The Scottish Court of Session held that M could not have been discriminated against. Firstly, her ADHD did not amount to a disability within the meaning of equality legislation because, on the evidence of M's teachers, it did not have a substantial and long term adverse effect on her ability to do day-to-day activities. Secondly, the evidence did not suggest that M's actions had been caused by her ADHD; the sexual encounter had been planned in advance rather than being an impulsive decision.

Though M's ADHD did not fulfil the definition of a disability, that is not to say that it will never be a disability. The question of whether a claimant is disabled will be determined in every case where disability discrimination is alleged, regardless of the kind of impairment. More severe cases of ADHD could conceivably fit the definition.

JC v Gordonstoun Schools Ltd [2016] ScotCS CSIH_32

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