



Balancing discipline & privacy

An independent school recently permanently excluded one of its pupils for having sent “highly offensive” posts on social media. The boy’s parents are reportedly challenging the exclusion and accuse the school of having breached their son’s privacy rights because, they claim, the school should not be looking at his private social media accounts.

Solicitors Ane Vernon and Hanna Basha reflect on the need for schools to ensure their policies and procedures are clear and always followed conscientiously...

In an environment where the rights of an individual are to be balanced with the education and welfare of the wider school community there will inevitably be a tension between the right of pupils to a private life and the right (and duty) of the school to investigate alleged wrongdoing.

In the independent sector, the range of legitimate grounds for disciplinary sanctions is wider than in maintained schools. The starting point is the parent contract which will give the school an express right to impose sanctions for misbehaviour both on and off school premises. In order to avoid uncertainty and later disputes, it is essential that the respective rights and obligations of school and pupils are clearly set out. Policies that are written clearly and communicated to the entire school community (with appropriate reminders) will go a long way to ensuring that all parties know the confines within which to conduct themselves, as well as what to expect when there has been a breach.

For example, an E-safety policy firmly incorporated within the school’s disciplinary policy, and regularly communicated to students, will make expectations clear. Cyberbullying and transmission of obscene or threatening

Ane Vernon and Hanna Basha are education and privacy specialists at law firm Payne Hicks Beach – 0230 7465 4300 www.phb.co.uk

communications are obvious examples of misconduct leading to disciplinary sanctions, including exclusion. In order to investigate allegations of misconduct the school will need to consider whether it is appropriate to see a pupil’s private information, such as messages on social media platforms, emails and photographs. There is a balance to be struck between respect for privacy and the need to investigate and, in order to prevent disputes, policies should make clear what information can be accessed during an investigation or after a complaint is made.

The consideration of private information is easier to justify when another pupil complains of a serious misconduct such as cyberbullying. However it may be more difficult to justify looking at private messages where the behaviour complained about is less damaging and the investigation would intrude upon private, sensitive and highly personal information.

Policies should explain the types of behaviour that are considered misconduct and outline the investigation the school can instigate (including consideration of private information) and the range of sanctions that may be applied. Once the school is alerted to a possible breach, it should

be clear to all concerned what procedures will be followed. The school should adhere to principles of fairness at all times. The pupil is entitled to know the nature of the complaints made against them and the school should conduct an even-handed fact-finding process and ensure that the pupil receives a fair hearing. If reasonably satisfied of the pupil’s misconduct on the facts, the sanction imposed must be proportionate to the severity of the behaviour and the pupil must be made aware of the right and grounds of appeal.

The disciplinary process itself can bring difficult issues of privacy and confidentiality. Often the disciplinary procedure itself is shrouded in confidence and this can make it difficult for ‘similar fact’ evidence to be gathered. It also means that the fairness of decisions and processes can be difficult to scrutinise. Leaking information about a confidential disciplinary process could itself be a breach of the school’s policy.

During the disciplinary process, a witness may provide evidence on the condition that this evidence remains confidential or they remain anonymous, but this is a difficult concession to make. Again, principles of fairness dictate that the pupil must know the case made



Ane Vernon, Partner and schools and education specialist lawyer



Hanna Basha, Partner and privacy law specialist

against them and the school needs to consider whether this is possible if a witness remains anonymous or if it cannot reveal certain evidence obtained under obligations of confidence.

There is a complex interplay between protecting the privacy rights of individuals and the need to conduct a thorough investigation of alleged wrongdoing. Schools need to be careful to weigh the competing rights of the accused and the accuser, made more difficult by the age of those involved and the close proximity of the individuals. The safest and most certain way for the school to balance these rights is to have clear policies and procedures and follow them conscientiously. Acting outside of its own stated policies and procedures will expose the school to complaints and legal challenge.

Teachers complete John O’Groats to Land’s End Challenge

A team of ten teachers at Burgess Hill Girls, Sussex, has completed a challenge to run, walk and cycle the equivalent distance of John O’Groats to Land’s End.

The teachers: Alice Morgan, Samantha Durrant, Lucy Atkinson, Heather Cavanagh, Greer Williams, Rebecca Branton, Claire Williams, Ros Clayson, Shelley Allen, and Nicola Hickey ran, walked, and cycled the distance. They originally set themselves the target of completing the 603

miles as the crow flies, but as they got going, they extended their sights to the length by road, 874 miles. In fact, they ended up going even further, their final distance was 882 miles.

Team organiser Ros Clayson is immensely proud of the team’s effort: “Some people might say that taking on an additional challenge given the year we have had might be mad for us teachers. However, getting out and exercising has been a great stress

reliever for us all. Next, I would like us to ‘travel’ to Tokyo for the opening of the Olympic Games on

the 23rd of July, it is almost 6000 miles so we might need some more recruits.’

