

First Tier Tribunal HESC
Care Standards Jurisdiction
Heard at: Poccok Street Hearing Centre
On Monday 29th July 2013.

Before

Deputy Chamber President Judge John Aitken
Specialist Member Linda Redford
Specialist member Janice Funnell

Ikiebe (1999.IS)

-v-

Secretary of State for Education

Decision

1. Chrysolyte School is an independent school registered for children aged 2 to 14. There has been a police investigation related to physical abuse of children at the school, the proprietors of the school, Mr J and Mrs R Ikiebe, were arrested in July and August, and two teachers in September 2012. All were initially bailed not to attend the school, but no proceedings are to be taken against Mr Ikiebe and the two teachers concerned. Mrs Ikiebe, one of the proprietors, known as the Matron or headteacher, is to stand trial for assault occasioning actual bodily harm in November 2013.
2. The Secretary of State determined that there was a risk of serious harm to the welfare of pupils and on 22nd October 2012 issued a determination that the school should close under **Section 166(2)** of the **Education Act 2002**, the effect of that determination is suspended if an appellant files an appeal, which was done on 25th October 2012. On 20th November 2012 the Secretary of State made an application under **Section 166(5)** to have the school treated as removed from the register. That application was refused following a hearing on 3rd December 2012, but the tribunal on that occasion indicated that it was refusing the application because a number of measures had been or were to be brought into effect to ensure children at the school were protected. A further application has been made following a number of developments.
3. The allegations made concerning the school are the use of rulers and other items to inflict corporal punishment, and the use of stress positions such as sitting in imaginary chairs. There is a further concern of the Secretary of State that, although on bail, with conditions as described above Mr Ikiebe was seen to be in the communal areas of the school alone, and whilst he was not with children unsupervised, the potential for this to happen was high.

4. The Tribunal decided this on the last occasion, at paragraph 10:
“We consider overall that the arrival of staff who are not said to have been involved in any of the alleged behaviours, the CCTV recording, and the presence of another school principal with the proprietors themselves not having access to the children is a sufficient protection for the children at the school during this interim phase whilst the validity of the allegations is tested. We have made that decision on the basis that if any of the measures indicated by Mrs Ikiebe are not brought into effect fully or disregarded in any way that there is likely to be a further application by the Secretary of State. Who of course has access through Ofsted to inspect the school”
5. Mrs Ikiebe’s position is that the allegations are untrue, and that in any event sufficient safeguards are in place to ensure protection of the children at the school.
6. We make it plain that in looking at the risk of serious harm as we are obliged to do, we have assessed it afresh on the circumstance as at the hearing, we have not simply looked at the previous assessment of the tribunal and relied upon that, the situation has changed and the assessment of risk being multifaceted requires that all is looked at in the round.
7. On 10th January 2013 the Police indicated that Mr Ikiebe and the two teachers would not be prosecuted, that decision was of course based on the need to pass a test related to establishing a reasonable chance of conviction on a test based on beyond reasonable doubt at a criminal trial. They returned to the school.
8. We heard from Mrs Ikiebe that on 11th January 2013 she held an enquiry into the behaviour of the teachers concerned together with a newly appointed governor, Mrs Jenfa. Mrs Ikiebe indicated that she drew on information from the parents, the children through contact with other teaching staff and an interview to make the decision. No records of this investigation were shown to us. Mr Ikiebe was subject to a similar investigation except only the governor conducted it. No action was taken against either members of staff or Mr Ikiebe; they were in effect exonerated and returned to teaching, in Mr Ikiebe’s case holding assembly as the school pastor and other administrative matters around the school. The two teachers, Mrs Baruwa and Miss Ameen, signed letters indicating that they understood that no physical punishment was to be used. Before us in evidence Mrs Ikiebe, when pressed on how independent such an investigation was, suggested that she was also intending to have an independent investigation, but had not done so earlier because she suspected the motives of the Local Authority. She did not believe the Local Authority would be independent.
9. We cannot stress how inadequate from a child protection point of view, this process of returning Mr Ikiebe and the two teachers to work was. Just a moment’s thought makes it plain that the form of the investigation is so heavily subject to obvious prejudices that it could not be called adequate in any way. Mrs Ikiebe is herself on bail awaiting trial for assault upon a child at the school, she vehemently denies the

offence, and, on her account, the child and parent involved are not being truthful. All of the children who have made allegations against the three investigated at the school had also made allegations against Mrs Ikiebe. That she should be in the position of deciding upon the allegation of assault upon children at the school in respect of others who have been accused of the same matters is absurd. It is notable in this context that Mr Ikiebe was interviewed by the governor alone, plainly Mrs Ikiebe could see that interviewing her husband was inappropriate, but no independent person was substituted. Mrs Ikiebe was to accept that the governor was answerable to her as proprietor, which of course applied to her husband as co proprietor.

10. We have heard her account that she was to instigate an independent investigation at a later stage. We do not accept that. We consider that she had no such intention. The need for investigation was before they returned to contact with children, and, in any event, she has had 6 months to commence such an investigation and not done so we conclude that she had no intention of conducting an independent investigation, and was untruthful to us about that. Mrs Ikiebe, in her witness statement at paragraph 25, indicated that she had read the Department of Education guidance on such situations before her investigation, and we saw that it had been specifically drawn to her attention in February.
11. The guidance "*Dealing with allegations of abuse against teachers and other staff*" has this to say at paragraphs 14 and 15:

"In straightforward cases, the investigation should normally be undertaken by a senior member of the school staff....However in other circumstances, such as a lack of appropriate resource within the school, or the nature or complexity of the allegation will require an independent investigator"
12. Since allegations were made against a co proprietor the starting point of any adequate investigation would have been an independent investigator. However, irrespective of the guidance, this was a matter of plain commonsense.
13. The result of these wholly inadequate investigations was that three people who are alleged to have physically abused children were returned to contact with them. Whilst we do not assume that they would immediately resume the physical punishments and bullying that were a part of the allegations, we do observe that their return without an independent investigation must have an inhibiting effect on any child who might otherwise report abuse of any kind.
14. We find therefore that despite the written assurances given by the two teachers as to compliance with anti abuse policies and the training undertaken by the school staff into safeguarding, the school proprietors have demonstrated a cynical disregard for any measures likely to be effective to safeguard pupils. This of course in the face of ongoing scrutiny by the Department for Education at a time when one might expect them to be exceptionally careful and correct in their practice.

Having come to that conclusion we are not satisfied that any child could be said to be free of serious risk of harm in such an environment.

15. The Secretary of State made a number of other allegations about the adequacy of CCTV coverage, failure to keep measures in place as indicated at the last hearing, poor areas found in recent inspections and the part time presence of the deputy head, and absence of that person ill since April who was to have been an independent presence at the school. We do not find it necessary to consider whether those matters of themselves are likely to be the source of a serious risk of harm having regard to the findings we have made on safeguarding generally. We do not consider that any of the measures specified on the last occasion could be effective in safeguarding the children in the light of our present findings. We of course make no findings on the allegations themselves, at this stage merely the investigation of them by the school.

Decision

The application of the Secretary of State is granted, the school will not be regarded as registered pending determination of its appeal under Section 167 of the Education Act 2002.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Monday, 05 August 2013