

SAINT VINCENT AND THE GRENADINES

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO 207 OF 2013

**In the Matter of the transfer of ALENIA ALLEN from the SAINT JOSEPH CONVENT KINGSTOWN to
the EMANNUEL HIGH SCHOOL MESOPOTAMIA without good cause**

AND

**In the matter of the CIVIL PROCEDURE RULES PART 56 AND THE APPLICATION BY MERLENE
ALLEN (NEXT FRIEND OF ALENIA ALLEN) for leave to apply for judicial review**

BETWEEN:

MERLENE ALLEN (NEXT FRIEND OF ALENIA ALLEN)

Claimant

AND

[1] THE CHIEF EDUCATION OFFICER

[2] SENIOR EDUCATION OFFICER SECONDARY SCHOOLS

[3] PRINCIPAL, ST JOSEPH CONVENT (KINGSTOWN)

[4] MINISTRY OF EDUCATION

[5] CLUNY BOARD OF MANAGEMENT

Defendants

Appearances

Mr Jomo Sanga Thomas for the Claimant

Mrs Judith Jones-Morgan, and with her, Mrs. Cerepha Harper-Joseph,

Mr Kezron Walters, Mr J-Lany Williams for the 1st to 4th Defendants

Mr Duane Daniel for the 5th Defendant

.....
2015, March 26; May 13; June 2; July 3
2016: July 19
.....

JUDGMENT

INTRODUCTION

[1] **LANNS, J [AG]:** In this case, the Claimant Merlene Allen (Mrs Allen) seeks judicial review of a decision, said to be made by the named Defendants to transfer Mrs Allen's daughter, Alenia Allen from the St Joseph Convent, Kingstown (SJCK) to the Emmanuel High School, Mesopotamia (EMHS). Mrs Allen alleges that the decision was procedurally and substantively improper.

[2] On the 14th October 2013, pursuant to the Order of the Court, Mrs Allen filed a fixed date claim seeking various orders and declarations as follows:

- "1. A declaration that disciplinary action taken against the Claimant by the Principal of the Saint Joseph Convent Kingstown, was resolved on the 18th March 2013;
2. A declaration that the Chief Education Officer and the Senior Education Officer, Secondary Schools, misapplied s. 55 (2)(b) of the Education Act, 2006, and therefore transferred Alena without good cause;¹
3. An order quashing the decision of the Chief Education Officer, and Senior Education Officer, Secondary Schools, to transfer Alenia from Saint Joseph Convent, Kingstown, to Emmanuel High School, Mesopotamia without good cause.
4. A mandatory order that the defendants give a reason for transferring Alena from Saint Joseph Convent, Kingstown, to Emmanuel High School, Mesopotamia.
5. A mandatory order requiring the defendants to provide a space in form 4s of the Saint Joseph Convent, Kingstown, as stated in Alenia's end of Term 3 report card.²
6. Such other further relief as the court deems just.
7. Costs."

¹ This relief was abandoned at trial

² This relief was also abandoned at trial

- [3] The parties filed affidavits prior to the hearing, and were allowed to cross-examine the affiants at the hearing.
- [4] At the end of the hearing, the parties were ordered to file and serve written submissions by the 3rd July 2015. Counsel for the Claimant and counsel for the 1st through 4th Defendants have presented me with written submissions and authorities in support of their respective contentions³, and I am grateful for their assistance. I was not similarly assisted by counsel for the 5th Defendant. He did not file any submissions. As for the transcript of the proceedings, this was made available to me in bits and pieces. The full transcript was received electronically on the 20th April 2016.

RELEVANT FACTUAL BACKGROUND

The parties

- [5] Merlene Allen (Mrs. Allen) is the mother and next friend of Alenia Allen⁴
Alenia was at all times material, a Third Form Student at the SJCK.
The SJCK is an "assisted secondary school" which is defined under the Education Act 1992 as a secondary school that is in receipt of assistance out of public funds. The SJCK is a public school but not a government school. While government schools are under the control of the Ministry of Education, assisted secondary schools are administered by a Board of Management.
The Principal, SJCK was/ is Ms Calma Balcombe (the Principal).
.The Chief Education Officer is/was Ms Lou-Anne Gilchrist (the CEO)
The Senior Education Officer, Secondary Schools is/was Mr Asfo Stevens (the SEO)
The Cluny Board of Management is made up of the Central Cluny Board of Management which sits in Trinidad and Tobago and the Subsidiary or local Cluny Board of Management (the Cluny Board ;or the Board) that sits in St Vincent and the Grenadines. The Cluny Board is directly responsible for the day-to- day management of the SJCK
The Cluny Board is made up of the Sister Superior, the Principal and three nominated members.⁵

³ Even though they did not comply strictly with the deadline

⁴ Referred to interchangeably as 'Alenia' or 'the student' or 'the child'

Letter of suspension

- [6] In a letter dated 13th March, 2013, the Principal of the SJCK informed Mrs Allen that her daughter had been suspended for two days, with effect from 13th to 15th March 2013. The stated ground for the suspension was 'disrespect to a teacher'. The letter informed that the student was to return to school on the 18th March 2013. The letter also informed Mrs Allen that "if you wish to see us we will be available Monday 18th March 2013 at 2:00 pm".
- [7] Significantly, the letter warned that if the student's disrespect for teachers continues, she will be dealt with by the Discipline (sic) Committee of the Cluny Board . The letter, dated 13th March 2013 is reproduced for convenience:

"Dear Mrs Allen

LETTER OF SUSPENSION

I regret to inform you that your daughter /ward Alenia Allen of Form 3 has been suspended from school for 2 days from March 13th to 15th 2013. She will return to school Monday 18th March 2013.

REASONS FOR SUSPENSION:

Disrespect to a teacher

I ask Alenia on Tuesday 12th to convey a message to you to accompany her to school on Wednesday 13th March to discuss the matter. When I spoke to her in class, she informed me that she did not remember to deliver the message. If you wish to see us we will be available on Monday 18th March at 2:00pm.

If Alenia's disrespect for teachers continue, she will be dealt with by the Discipline Committee on our Cluny Board of Management.

⁵ Counsel for the Claimant raised the issue of lack of a quorum, which issue was canvassed before me. However I have found it unnecessary to address this issue because my determination of the procedural fairness issue in the Claimant's favour provides a sufficient basis to address the Claimants' requests for relief.

I look forward to your cooperation as we work together for the advancement of the school and your child."

- [8] As can be seen, the letter did not elaborate on the reason for the suspension. It did not explain the form of disrespect. However, I glean from the affidavit evidence, and there is no dispute that the student did a test, and her teacher Mrs Junet Bascombe, on the 11th February 2013, wrote in Alenia's exercise book, a comment as follows: 'This is extremely untidy.' The student at some point wrote on the same page, underneath the teacher's comment "like you kitty cat weh na wash." Not surprisingly, Mr Daniel, during the course of the hearing, sought to place the local interpretation upon that response - an interpretation that was not complimentary of either the student or her teacher.
- [9] On the 8th March 2013, the student did another test and Mrs. Bascombe saw the student's response to her comment. I glean from the record too that there was an issue of Alenia refusing to go to the library when told to do so, and her walking off the school compound even though she was told not to leave. These events apparently triggered the two day suspension, and the 18th March 2013 meeting culminating in the transfer/expulsion of the student. It is said that the student was awarded no marks for the test she did. Counsel for the Claimant view this as double jeopardy.
- [10] Pursuant to the option (as opposed to an invitation) given to Mrs. Allen in the letter of suspension to 'see us' if you wish at the School on the 18th March 2013, Mrs Allen and her daughter attended at the SJCK on the 18th March 2013. A meeting was convened. In attendance were: Mrs Allen and her daughter, (3) the SEO; (4) the Principal, SJCK; (5) Mrs Antonette Best-Jardine, Vice Principal of the SJCK, (6) Mrs Silta James, Dean of Discipline, SJCK, (7) Sister Jacinta Wallace, Principal of the St Joseph Convent, (Marriaqua) and Chairperson of the Cluny Board.
- [11] There is a dispute as to whether it was decided at the meeting that Alenia would be transferred. Mrs. Allen says that there was no such decision taken or expressed. The Defendants disagree. They say that it was decided that the student would be transferred from the SJCK and would not return to the school after the end of the term. No minutes were taken of the meeting. However,

what is obvious from the affidavits before me, is that the meeting was convened in a most unhealthy climate, with temperaments raging, name calling and accusations that teacher Mrs Junette Bascombe intentionally targeted the student. According to Mrs Allen, the SEO called the student a "nail hole". And it is said that the Principal 'ranted' "I do not want Alenia back in my school." The Principal could not recall saying those words. However, it is said that it was the utterance of those words by the Principal that prompted Mrs Allen to begin shopping around for another school, and to this end, she met and had a conversation with Mrs Andrea Bowman, Principal of the Girls High School. This meeting did not produce the desired result.

- [12] Following the meeting of 18th March 2013, the student returned to the SJCK school, and continued down to the end of the academic year. She was asked to select her classes to take in Form 4. On the 5th July 2013, she received her Report Book which stated that she was promoted to Form 4s. However, she was not given a Book List. Instead, she was given a letter (apparently in a sealed envelope) addressed to her mother, but which contained an undated copy of a letter addressed to Mr Greaves, the Principal of the Emmanuel High School, Mesopotamia.. The letter reads:

"Dear Mr Greaves

Re: Alenia Allen

DOB: 08/08/98

Age: 14 years

As per your dialogue between Mr Asfo Stevens, Senior Education Officer/Secondary Schools, I write to advise that a place at your school has been offered to Alenia Allen with effect from August 2013.

She was previously a student of the St Joseph's Convent School, Kingstown.

I would be grateful if you would extend the necessary courtesies to have her registered at your institution. She should be placed in Form 4

Thank you for your usual cooperation.

Yours sincerely

Asfo Stevens [Signed]
for Lou-Ann Gilchrist
Chief Education Officer
cc: Principal, Emmanuel High School, Mesopotamia".

- [13] Mrs Allen was aggrieved by the contents of the letter. According to her, that was the first time that she learned that Alenia was being transferred/expelled from SJCK, and offered a place at Emmanuel High School. She could not understand the move especially since the Report Book informed that the student was promoted to Form 4s. She acted swiftly and resorted to the court to challenge the decision that was purportedly made without giving her an opportunity to be heard.⁶ In an ex-parte application before Bruce-Lyle J, the court granted Mrs. Allen leave to apply for judicial review and ordered that the student be returned to school. On application by the learned Attorney General, the order for the student's return to SJCK was set aside by a judge of coordinate jurisdiction.

ISSUES

- [14] Learned counsel for the Claimant has identified the issues to be (1) Whether the manner in which the Defendants made the decision was procedurally improper; i.e. whether they had a duty to give reasons for their actions; (2) Whether the Defendants failed to take relevant factors into account; (3) Whether the Defendants failed to act proportionately in their decision; and (4) Whether the Defendants failed to give the Claimant a fair hearing.
- [15] Learned counsel for the first to fourth Defendants identified the issues to be: (1) Whether the first through fourth Defendants made the decision to transfer the student from SJCK; (2) Whether the decision of the first through fourth Defendants to place the student at the Emmanuel High School was done in breach of natural justice; (3) Whether the Claimant has a right to have a say in the school into which her daughter is placed.

⁶ There is no provision in the Board's constitution or in the Handbook for a review of, or an appeal against the decision.

- [16] Ultimately, the questions to be determined are: (1) who made the decision; and (2) whether the decision was procedurally and substantively improper.
- [17] For the reasons expressed below, I have come to the conclusion that the decision to transfer/expel the student was made by the 1st, 2nd, 3rd and 5th Defendants and the persons who were present at the 18th March 2013 meeting. I have also come to the conclusion that the decision was procedurally and substantively improper in that the Defendants and the persons who were present at the meeting of 18th March 2013, did not act fairly in coming to their decision to transfer/expel the student from the SJCK; in particular, the Claimant was afforded no, or no sufficient opportunity to make representations pertaining to the decision to transfer and or expel the student from the SJCK.

WHO MADE THE DECISION TO TRANSFER ALENIA

- [18] Learned counsel for the 1st through 4th Defendants (Mrs. Jones-Morgan) submits that the decision to expel and or transfer the student from the SJCK was not a decision made by the 1st through fourth Defendants. Rather, posited learned counsel, the decision was made by the Cluny Board. Learned counsel for the Claimant, (Mr Thomas) on the other hand, submits that the decision was made by the Defendants. Mr Thomas pointed to the undated letter, signed by the SEO for, and on behalf of the CEO. Additionally, counsel pointed to paragraph 4 of Mrs Allen's affidavit dated 11th October 2013, where she deposed that during a meeting with the CEO on the 2nd September 2013, to find out why her daughter was transferred, the CEO asked her to do two things for her: 'go and register your child at Emmanuel High School, and the other, get out of my office.' Mr Thomas also referred to the affidavit evidence (dated 10th September 2013), given by Mrs. Allen that the SEO told her that the Principal informed him that she had secured another school for the student to attend; that he was not the one who was removing the student; that he was only facilitating the move. The Principal gave evidence that "the conclusion that the student should not return to the SJCK was relayed to the Claimant by Mr Stephens". (See Para. 23 of Affidavit filed 27th September 2013). As can be seen, this assertion is inconsistent with the evidence given by the SEO on this issue.

[19] There is also evidence given by Mrs Allen that the Principal stated at a meeting of 18th March 2013, that she did not want the student back in her school. But the Principal could not recall making such a statement. At paragraph 15 of her said affidavit, the Principal continued: "It was clear at the end of the Meeting [of 18th March 2013] that [the student] was going to be transferred as a result of her disrespectful and defiant behaviour displayed towards the teachers and me, the Principal, and this was conveyed to the Applicant [Mrs. Allen] by Mr Stephens at this Meeting."

[20] Another telling bit of evidence cited by Mr Thomas, in answer to the question as to who made the decision to transfer/expel the student, was the letter dated 5th April 2013 from the Principal to the CEO wherein the Principal stated among other things that; " given the lack of cooperation by both Mrs Allen and Alenia in resolving the issue, our request is that Alenia should be transferred to another institution as soon as possible." (Emphasis mine). I reproduce the letter in its entirety for its full effect:

"5th April 2013

Ms Lou-Ann Gilchrist
Chief Education Officer Ministry of Education
Kingstown

Dear Ms Gilchrist,

RE: ALIENA ALLEN

I wish to bring the following case to your attention.

Aliena (sic) Allen is a third form student of the St Joseph's Convent, Kingstown.

On Wednesday, 13th March 2013, she was instructed by the Principal to go to the library. This was in an effort to deal with her disrespect by writing an inappropriate comment in her exercise book in response to what the teacher had written. She asked the Dean of Discipline if she could leave to go

home. I told the Dean that I had to prepare a letter for her to take to her mother and that she could not leave.

Allena (sic) left the library and went downstairs. After conferring with the Principal, the Dean instructed her to return to the library. She refused to obey the Dean's instruction and was insistent on leaving the school's compound.

As a result of her defiance, the Dean summoned the Principal to deal with the issue. In the presence of the Dean, the Principal told Aliena (sic) her choice is to go to the library, or if she leaves the school compound she will not be allowed to walk back into school. Aliena (sic) proceeded to walk off the compound.

A meeting was convened on Monday 18th March 2013 to deal with the matter..

Present were:

Mrs Marlene Allen --- the student's mother
Aliena (sic) Allen-- the Student
Ms Calma Balcombe --Principal
Mrs Antoinette Best-Jardine -- Vice Principal
Mrs Sita James -- Dean of Discipline
Sister Jacinta Wallace --Cluny Board of Management
Mr Asfo Stevens --S.E.O. Secondary Schools (ag)

At the meeting, the support of Aliena's (sic) mother in resolving the situation was not forthcoming. Apart from this, Aliena's (sic) disrespect for Sister Jacinta and Mr Stephens was quite evident. She refused to answer when asked to respond to direct questions, and her body language was undesirable. This is not the first time we have had to deal with incidents of disrespect for authority by Aliena.(sic).

Given the lack of cooperation by both Mrs. Allen and Aliena (sic) in resolving the issue, our request is that Aliena (sic) should be transferred to another institution as soon as possible. In the mean time, she will be allowed to continue her education at the St Joseph's Convent, Kingstown, until a place has been found elsewhere.

In the interest of harmony in our institution and the continued education of the student, we are therefore seeking your assistance in facilitating the transfer as recommended.

Thanking you for your cooperation

Respectfully

Calma Balcombe (Ms)

Principal

cc. Mr Asfo Stephens, S.E.O Secondary Schools (ag)"

[21] It seems to me, based on the language of this letter, that it admits of more than one interpretation. First it could be interpreted as a letter by the Principal, (in her capacity as Principal) requesting, (on behalf of the persons present at the Meeting of 18th March 2013), that the student be transferred to another school on the ground of "lack of cooperation by both Mrs. Allen and her daughter in resolving the issue of Alenia's refusal to go to the library, and subsequently walking off the school compound without permission" Second, it could be interpreted as a recommendation made to the CEO by the Principal, on behalf of all the persons present at the same meeting and or on behalf of the SJCK⁷ that the student be transferred to another school by reason that both Mrs. Allen and her daughter failed to give their cooperation to the persons present at the meeting in their efforts to resolve issues involving Alenia.

[22] In my opinion, the letter of 5th April 2013 was a recommendation, akin to an invitation to treat. It was open to the CEO and the SEO to accept or reject the recommendation. The undated correspondence to the Principal of the EMHS is proof that the SEO and the CEO did in fact accept the recommendation and proceeded to put the wheels in motion to facilitate the transfer as requested/recommended, without carrying out any investigations of their own. Then, it seems by requesting that Alenia 'should' be transferred, it gives the impression that a decision was already taken at the meeting and the letter was simply asking the CEO to assist in selecting a school. In the circumstances, I have come to the conclusion that the CEO and the SEO and the persons who were present at the 18th March 2013 meeting collaborated and jointly made the decision to transfer/expel the student from the SJCK.

⁷ Ms Calma Balcombe signed the letter to the CEO in her capacity as the Principal. The letter was copied to the SEO.

- [23] I come now to the issue which has been most addressed and argued in the submissions on behalf of the Claimants and the 1st through 4th Defendants⁸

WAS THERE A BREACH OF PROCEDURAL FAIRNESS BY THE DECISION MAKERS IN COMING TO THE DECISION TO TRANSFER/EXPEL?

- [24] The main issue to be determined here, is whether the Principal, the CEO, SEO and the Executive Committee of the Cluny Board acted fairly in coming to the decision to expel/transfer the student by giving Mrs Allen and her daughter an opportunity to make worthwhile representations on their own behalf before, and or after the decision was taken.

- [25] The corollary issues are:

- (1) Whether the Claimant was given notice that expulsion/transfer would be discussed at the meeting and told what factors would be considered.
- (2) Whether the Claimant had an opportunity to address the issue of transfer/expulsion;
- (3) Whether the grounds for expulsion contained an inappropriate factor;
- (4) Was the decision to transfer /expel the student disproportionate to the infractions committed by the student.

(1) Whether the Claimant was given notice that transfer/expulsion would be discussed at the meeting and told what factors would be considered

- [26] In **Hugh Wildman v The Judicial and Legal Services Commission of the Eastern Caribbean States**,⁹ Gordon, J.A quoted Lord Mustill in **R v Home Secretary ex p. Doody**¹⁰ as saying:

"...Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his behalf either before

⁸ It is to be remembered that the 5th Defendant did not file any submissions.

⁹ Civil Appeal No 9 of 2006, Grenada

¹⁰ [1994] 1 AC 531

the decision is taken; or after it is taken with a view to procuring its modification; or both. ...
Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will often require that he is informed of the gist of the case which he has to answer."

- [27] At paragraph 10 of her affidavit dated 27th September 2013, the Principal deponed " The purpose of the March 18th meeting was at all times to discuss Alenia's history of disrespect, defiance and non-compliance with the rules, and to dialogue with the Applicant about Alenia's future at the institution. However, at this meeting, the applicant insisted on placing all of her focus on Mrs Bascombe, rather than dealing with the substantive issues."
- [28] The SEO, at paragraph 6 of his affidavit dated 27th September 2013, stated "The March 18th meeting was held to discuss Alenia's latest act of misbehaviour."
- [29] There is no evidence on record to show that the Claimant was told expressly of these stated purposes of the 18th March meeting. In fact, the Claimant was not given any notice that there would be a meeting to discuss the transfer /expulsion of the student. The correspondence of 13th March 2013 which led to the attendance of Mrs. Allen and her daughter at the school on the 18th March 2013, did not expressly 'invite' Mrs Allen to attend a meeting. The letter did not give any inclination that a meeting was scheduled to be convened to discuss the transfer or expulsion of the student. The letter contained information about the child's suspension because of disrespect to a teacher. And it gave Mrs. Allen the option to 'see us' at the school at 2:00 p.m. suggesting that a meeting had been planned and was going to be held with or without her attendance. On her own volition, Mrs. Allen attended at the school, and during the meeting, the issue of the transfer/expulsion seemed to have arisen. I am of the view that before the decision to transfer/expel the student was taken, it was necessary for Mrs. Allen to be given reasonable notice that a meeting or hearing was going to be convened to discuss the issue of such transfer/expulsion, and any other relevant issue. And any relevant documents and other forms of evidence on the child's file pertaining to the child's academic performance and her conduct and attitude that may be relevant should have been made available to the Claimant so that she could adequately prepare herself for the meeting or hearing. To my mind, the lack of notice of a hearing

to transfer/expel the student, or to discuss the issues stated in the affidavit of the Principal and the SEO, undermined the fairness of the procedure that led to the decision to transfer/expel the student from the SJCK.¹¹ Clearly, the Claimant was not afforded an opportunity to properly prepare herself for the meeting, as she was not notified of a meeting to discuss expulsion/transfer of her daughter, nor of the purpose of the meeting as is set out in the Principal's affidavit.

(2) Whether the Claimant had an opportunity to address the issue of transfer/expulsion

- [30] Mrs. Jones-Morgan submitted that the issue of the student being removed from the SJCK was thoroughly ventilated in the 18th March 2013 meeting, and both Mrs. Allen and her daughter were provided opportunity to make representations, and did in fact make representations. Mrs. Jones-Morgan sought to support this submission by quoting Mrs. Allen as deposing in her affidavit filed on 10th September 2013, that the SEO stated at the 18th March 2013 meeting that "If I place her [the student] at a school in the rural area you will say its spite, or if I place her at GHS you will be happy, and if you don't put a stopping to this 'nail hole' (referring to Alenia) you will see..." I make the observation that that statement speaks to 'placement' of the student. The question of a placement for a student is different from the question as to whether the Claimant had an opportunity to address the issue of the expulsion /transfer.
- [31] Mrs. Jones-Morgan makes much of the fact that the Claimant made that statement in her affidavit, yet complains that there was no discussion at the meeting of 18th March about the transfer of her daughter. Notably, no minutes were taken at the meeting. The meeting was never recorded; so even if the subject of the transfer/expulsion arose, there are no minutes/recording to assist in determining the extent of the discussion on the issue, or the point at which such discussion arose. It must be remembered that there was nothing to inform Mrs. Allen that there was a meeting to discuss transfer/expulsion or alternate placement of the student.
- [32] Mrs. Jones-Morgan also relied on the evidence of Mrs. Bowman, the Principal of the Girls High School to support her submission that Mrs Allen and her daughter were given an opportunity to be

¹¹ Reference is made in the 1st to 4th Defendants' submissions to a second letter dated 15th March 2013 said to have been sent to the Claimant advising her of the meeting of 18th March. I have not had sight of that letter; it is not on file; and no reference has been made to it by the Claimant or her lawyer. And none of the affiants spoke to it in their affidavits. In my view even if that letter was sent advising of the meeting, it would still be unlikely that that would have been adequate notice to enable her to properly prepare for the hearing.

heard, and that she (Mrs Allen) knew of the reasons for the transfer. Mrs. Bowman was not present at the meeting, but she had a discussion with the Claimant on the same day, after the 18th March meeting.

[33] Mr Thomas, for his part, referred to the attempts made by Mrs. Allen to find out from the Principal the reason why her daughter was being transferred; whereupon the Principal simply referred to the 18th March 2013 meeting. Mr Thomas also referred to the attempts made by Mrs Allen to get reasons for the decision from the SEO and the CEO, and for an opportunity to be heard on the decision/actions taken in relation to her daughter since the 18th March meeting. Mrs. Allen denies that her daughter was asked any questions at the meeting. As I have said, no minutes of the meeting, were taken; there was no recording of the proceedings, so it is uncertain whether questions were asked and if so what questions the child was asked.

[34] I hold the view, based on the evidence before the court, that the Claimant had no, or no sufficient opportunity to address the issue of the transfer/expulsion of the student. This is evident in the process of transfer/expulsion utilised by the Defendants. For one thing, the letter to the CEO requesting that the student be transferred and recommending that the CEO facilitate the transfer of the student, was never copied to the child's mother even though she (the mother) was implicated in the letter. This was a major decision about a child's transfer/expulsion out of her home school and about placement in a non-government assisted secondary school that was being recommended in circumstances where, on the 5th July 2013, the child was given a Report Book indicating that she was being promoted to Form 4s of the SJCK, and allowed to select her classes for the next term. Indeed, there was a legitimate expectation (created or encouraged by the SJCK) that the child would return to the SJCK. Clarification was required, indeed, hence the attempt by Mrs Allen to meet with the Principal, the CEO and SEO.

[35] That the Claimant had no, or no sufficient opportunity to address the issue of the transfer/expulsion of the student is also evident in the undated letter from the CEO to the Principal of the Emmanuel High School (signed by the SEO on behalf of the CEO), about the placement of the student. This undated¹² letter came to the Claimant's attention in a questionable and suspicious way. I think the

¹² No explanation was forthcoming as to the reason why the letter was undated

Claimant was entitled to be issued with a copy of it. This did not happen. In fact, the SEO testified that the words at the end of the letter indicating that the letter was copied to the very person to whom it was addressed, were not supposed to be there and should have been deleted. He never said that it was intended to be copied to Mrs. Allen at all. Mrs. Jones-Morgan sought to engage in 'damage control' by suggesting that the note indicating that the letter was copied to the Principal, Emmanuel High School, Mesopotamia, was a mistake. Perhaps it was. But no one testified that it was. The evidence is that the notation should not have been there; it should have been deleted.

- [36] Significantly, the letter was to the effect that the CEO had already acceded to the request and recommendation of the Principal of the SJCK, and was in the process of implementing such request and recommendation without giving the Claimant a fair hearing. There is evidence (which I accept) that the Claimant waited for nearly three hours at the Ministry of Education before she could see the CEO for clarification. The CEO gave evidence that she was in a meeting with the Minister. When the CEO eventually became available, she indicated that it was her lunch time. The Claimant asked that she be given just five minutes. The CEO offered two. But it was sufficient to imply/convey that the transfer/expulsion/placement was a done deal, and there was nothing to explain. Indeed, the Claimant gave evidence that after a brief exchange, she was told to go and register the child at the Emmanuel High School, and get out of the CEO's office. I believe her. This can hardly be said to be an exercise of good faith or due process. Mrs. Jones-Morgan made reference to instances where the Claimant met with the SEO and others after she saw the letter from the SEO to the Principal, Emmanuel High School, and made no complaint. This does not mean that there was no denial of procedural fairness. What fairness requires is the opportunity to address the decision to transfer/expel; before the decision; and to respond to allegations made. I am satisfied that the Claimant has shown that she had no, or no sufficient opportunity to address the issue of the transfer/expulsion of the student

(3) Whether the grounds for transfer/expulsion contained inappropriate/irrelevant factors

- [37] The **SJCK Handbook for Parents and Students**¹³ indicates the circumstances where a student will be sanctioned with transfer, expulsion or withdrawal. It provides for mandatory withdrawal or

¹³ It bears no date; so it is unclear as to when it was published.

expulsion if a student commits specified infractions while at school. These infractions are listed as 1) Bringing dangerous weapons or controlled drugs to school; 2) Behaving in a manner that jeopardises the safety of the rest of the school; 3) Being pregnant or had an abortion; (4) Persistent stealing. The student's misconduct did not fall into any of those categories. Indeed, when one looks at paragraphs 7 and 8 of the letter dated 5th April 2013 from the Principal to the CEO, and paragraphs 11 and 12 of the Affidavit by the Principal filed on the 8th November 2011, one sees the true reasons for the decision to transfer/expel the student. Those reasons had nothing to do with concerns for safety of the rest of the school; they had nothing to do with drugs or dangerous weapons; they had nothing to do with pregnancy or abortion and they had nothing to do with stealing. The evidence (as contained in the April 5th 2013 letter to the CEO) show that the factors taken into account in arriving at the decision to transfer /expel the student were

- (1) The lack of cooperation by both Mrs. Allen and her daughter in resolving the issues of the offensive comment, walking off school compound without permission; disrespect for those in authority; disrespect for Sister Jacinta and Mr Stephens¹⁴
- (2) The insistence of Mrs. Allen placing her emphasis, at the 18th March meeting on Mrs. Junette Bascombe rather than dealing with the substantive issues which were being raised.¹⁵
- (3) Alenia sitting sideways and looking outside the window, even when spoken to.¹⁶
- (4) Alenia's refusal to respond to most of the questions posed by Sister Jacintha and Mr Stephens¹⁷; and responding in an aggressive manner when she did respond¹⁸
- (5) Prior incidents of disrespect for authority by Alenia.¹⁹

[38] There is nothing in the Handbook that suggests that where a parent is uncooperative, or where a student exhibits defiance, rudeness and disrespect for authority, the student will be visited with transfer/expulsion /withdrawal.

¹⁴ See paragraphs 6 and 7 of the Principal's letter dated 5th April 2013.

¹⁵ See para .7 of letter dated 5th April 2013

¹⁶ See para 12 of the Affidavit of the Principal dated 8th November 2013

¹⁷ Mr Stephens in his affidavit dated 27th September 2013 accepts that he has no disciplinary jurisdiction over students of government assisted schools.

¹⁸ Para 12 of the Affidavit of the principal filed 8th November 2013

¹⁹ Para 7 of principals' letter of 5th April 2013.

[39] No consideration seemed to have been given to the fact that the student had a good academic and behavioral record up until Form 3, when Mrs. Bascombe became her teacher. No consideration seemed to have been given to whether, and if so, why Mrs. Bascombe would have targeted the student. Mrs Allen is said to have defended her daughter. Mrs Allen refutes this allegation and says that she has never condoned or encouraged any form of disrespect or bad behaviour by her daughter. The Principal and Vice-Principal on the other hand, in their affidavit evidence, defended Mrs Bascombe stating that she (Mrs Bascombe) has never targeted or singled out the student.

[40] The student is said to have antecedents in respect of: defiance, disobedience, and disrespect for those in authority; wearing long nails and the use of nail polish. These infractions are listed in section 3.3 of the Handbook as offences for which students will be penalised. The penalty for these infractions is not transfer or expulsion, and it seems that those infractions had already been dealt with. However, Mr Stephens in his affidavit dated 27th September 2013²⁰ stated that the 18th March meeting was called to discuss the student's "latest act of misbehavior". He was present at the meeting. How then does he reconcile his statement in paragraph 5 of his affidavit dated 27th September 2013 that he is not responsible for the discipline of children at government assisted schools as there is a Board of Management in place. And how does he reconcile his statement in the said affidavit that the meeting concluded with the general understanding that the student would be transferred from the SJCK. And further, how does a meeting to discuss the student's latest act of misbehaviour conclude with a decision to transfer/expel the student? What was the latest act of behaviour? Was it the offensive comment for which the student had already been sanctioned with suspension for 2 days? Or was it the student's disobedience in not waiting at the library and leaving the school premises without permission? I find, based on the evidence, that by laying store on the uncooperativeness of the Claimant, and by considering past offences for which the student had already been punished, the Defendants took into account inappropriate factors in coming to the decision to transfer/expel the student from the SJCK.

²⁰ At paragraph 6

(4) Was the decision to transfer/expel the student disproportionate to the infractions purportedly committed by the student.

- [41] Mr Thomas adverted to the principle of proportionality. This principle requires that there be a reasonable relationship between the objective which is sought to be achieved and the means used to achieve that end. The court in a judicial review process is not required to substitute its own view for that of the decision maker. But the court can assess whether the right balance has been struck. There is no dispute that the student had behavioral/attitudinal issues culminating with the offensive note written in her exercise book in response to the teacher's comment of untidy work, and the allegation that she walked off the school premises in disobedience to the Dean of Discipline.²¹
- [42] In the context of the Handbook, the offensive note will likely fall under 'pornographic material' which attracts suspension for at least one week. The student was suspended for two days. Obviously, this infraction was not seen as very serious. The offensive note (in the context of the Handbook) may also be viewed as 'rudeness' 'defiance' and 'disrespect for those in authority'. Rudeness and disobedience are punishable as follows; (1) student is issued a misconduct card; 2) student is told that her behaviour is unacceptable; 3) student is required to apologize immediately; 4) If student disrupts class, student is required to apologise in front of class; 5) student is warned that if behaviour persists she will be taken to the Dean of Discipline for further action.
- [43] Leaving the school compound without authorization attracts a penalty, but that penalty is not listed. Wearing long nails and the use of nail polish attracts a penalty, but that penalty is not listed.
- [44] As previously stated, the Handbook provides for mandatory withdrawal or expulsion if a student commits specified infractions, for example, bringing dangerous weapons or controlled drugs to school; 2) Behaving in a manner that jeopardises the safety of the rest of the school; 3) being pregnant or had an abortion. The student was not accused of committing any of those infractions.. Yet, she was expelled/transferred/withdrawn from the SJCK for reasons which had nothing to do with concerns for safety of the rest of the school, or with drugs and dangerous weapons, or with

²¹ Mrs Allen insisted the student never walked off the school premises

pregnancy or abortion. Here, the executive committee of the Cluny Board chose to go outside its own jurisdiction by saying arbitrarily 'we have the power to transfer and expel and we will ignore the rules and regulations and apply our own sanctions'. This resulted in punishment that was disproportionate to the misconduct. The executive committee of the Cluny Board, to my mind, failed to strike the right balance between being too lenient and being too severe. I find that in the context of the sanctions listed for specified offences, the decision to transfer/expel/withdraw was inconsistent with the rules and regulations as contained in the Handbook. The executive committee of the Cluny Board seemed to have concentrated on the purported 'lack of cooperation' of the Claimant, and treated the child as an appendage of her mother at the meeting, rather than being concerned with the best interests of the child, by considering any mitigating and or remedial factors. I have seen nothing in the papers before me, and no one gave evidence that the child was ever asked to apologise to the teachers whom she disrespected, nor was she ever referred for counseling sessions. A decision to transfer/expel should not be automatic or sporadic, or arbitrary or capricious. It should only be taken in appropriate circumstances, as a last resort, by the authorised tribunal or administrative body, and upon according procedural due process.

- [45] I am of the opinion that the defendants failed to administer their punishment in accordance with their rules and policies, and in accordance with the disciplinary objective set out in section 3.0 of the Handbook, which is 'to train girls to fit into society and become leaders'. In my judgment, the punishment was excessive and out of proportion to the relevant conduct. In my opinion, the Defendants failed to strike the right balance.

DISPOSITION

- [46] Having regard to the totality of the evidence and the circumstances in this matter, the court is of the view that there has been a failure of natural justice on the part of the 1st, 2nd, 4th and 5th defendants by reason of (1) Their failure to notify the Claimant of a hearing to discuss the transfer/expulsion of the student from the SJCK, and what factors would be considered at the meeting; (2) Their failure to give the Claimant an opportunity to address the issue of transfer/expulsion; 3) Their consideration of inappropriate grounds for expulsion; and (4) Their failure to adhere to the principle of proportionality in the light of the rules and regulations which specify the sanctions for the offences/infractions allegedly committed by the student.

[47] *In the case of **Glynn v Keele University***²², (different passages relied on by each counsel), it was stated that the court had a discretion even where there was a failure of natural justice, but that discretion must be sparingly exercised, and should only be exercised in an appropriate case. In the **Glyn** case, the court was of the view that that case was such a case because there was no question of fact involved. The court proceeded on the footing that the plaintiff was indeed one of the individuals who was seen sunbathing on the University compound - a one of a kind offence. The court found that on the facts of that case, expulsion of the student from campus was a proper penalty in respect of that offence. The plaintiff in his evidence did not put forward any justification for what he did. So the court held that the position would have been that if the Vice-Chancellor had accorded the plaintiff a hearing before making his decision, all that he, or anyone on his behalf could have done would have been to put forward some general plea of mitigation. The court did not disregard the importance of such a plea in an appropriate case, but did not think the mere fact that the student was deprived of throwing himself on the mercy of the Vice-Chancellor in that particular way, was sufficient to justify setting aside a decision which was intrinsically a perfect one.

[48] The decision in **Glynn** must be taken to be correct on its peculiar facts, and the Court respectfully accepts that decision. However, that decision may be distinguished by reason that the facts which led to the decision in the instant case are not only materially different, but are disputed and inconsistent in many respects. As I see it, this is a case where a meeting was called for a certain purpose, (specified by the Principal in her affidavit, and by the SEO in his affidavit), but the Claimant was not notified or informed of the meeting or its true purpose. This is a case where the SEO was present at the said meeting, and participated in the decision making process, even though he acknowledges that he is not responsible for discipline in government assisted schools. This is a case where the behaviour of the student and lack of cooperation on the part of her mother, at the 18th March meeting, were stated to be the reasons for the decision to transfer/expel the student from SJCK. It is certainly not a case where the Cluny Board met to determine the specific question of the child's transfer/expulsion from the SJCK, and voted for such transfer/expulsion after hearing the evidence; Nor is it a case where the Claimant was being given an opportunity to make adequate representations on the decision to transfer/expel the student from the SJCK; or where the only respite was for the Claimant to throw herself at the mercy of the court in a plea of mitigation as was the situation in the **Glynn's** case. Significantly, unlike the decision in

²² [1971] 2 All ER 69,

Glynn, I do not find that the decision of the Defendants who were in a quasi-judicial position was intrinsically a perfect one. On the contrary, I find that the decision was disproportionate, harsh, arbitrary and capricious.

CONCLUSION

[49] Given the views expressed above, on the unfairness of the decision making process, I have come to the conclusion that there was indeed a breach of the principles of natural justice in coming to the decision to transfer and expel the student from the SJCK, and all Convents of the Cluny Board in St. Vincent and the Grenadines. I am satisfied that the Claimant has shown that her right to be heard or to a fair hearing had been infringed. Not only did the Defendants fail to give the Claimant notice of the meeting to transfer/expel the student from the SJCK, so that she could adequately prepare herself, but they failed to give her reasons for the decision to transfer/expel. Even if the Defendants had no duty to give reasons, (as the Defendants have submitted) this did not affect their duty to act fairly. In coming to their decision to transfer/expel, the Defendants took irrelevant factors into account, and failed to consider relevant factors. As a consequence of the Defendants' failure to consider relevant factors, the student was met with punishment that was excessive and disproportionate having regard to the purported conduct of the student, and the sanctions for such conduct specified in the Handbook.

[50] The claimant has abandoned reliefs Nos. ii and v. in their Claim, as they are no longer in the interest of either party. That leaves Nos. i, iii, and iv.

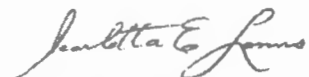
[51] I would exercise my discretion and make the following orders and declarations

- (1) A declaration that the Defendants breached their duty of procedural fairness in coming to their decision to transfer /expel the student from the SJCK.
- (2) An order that the file /record of Alenia Allen at the SJCK reflect that she was entitled to be accorded a fair hearing by the Cluny Board on the issue of her transfer/expulsion from the SJCK; and that she was not so accorded.
- (3) A Declaration that a recommendation for a student to be transferred/expelled from the SJCK should be made by the Dean of the Disciplinary Committee of the school; that the parent/guardian of the child involved should be given notice of

such recommendation after having met with the child's parent/guardian and the child; that the parent/guardian be also given reasonable notice of the date of hearing by the Board to determine the issue of the transfer/expulsion, and be supplied with relevant information and documentary evidence in advance of the hearing so she/he can adequately prepare himself/herself for such meeting; that once the Board has voted for the transfer /expulsion, then it is the Chairperson or Board's Secretary or the Chairperson's delegate who should make the requisite request of the Ministry for alternative placement, as opposed to a recommendation or a request of the Ministry that a student be transferred from the school; that, unless the SEO is directly/personally affected, he or she should not be present at a hearing to determine whether or not a student should be transferred or expelled from the SJCK or other government assisted secondary schools which are run by a Board of Management.

- (4) An order quashing the decision of the Defendants to transfer the student from the SJCK to the EMHS, and expelling the student from both Convent High Schools administered by the Cluny Board of St Vincent and the Grenadines.
- (5) An order that if the parties cannot agree on costs, they may make brief submissions within 30 days of the date of receipt of a sealed copy of this decision.

[52] I am grateful for the assistance of all counsel involved in this matter.



Pearletta E. Lanns
High Court Judge [Ag]