

## **Court of Appeal Upholds Equality Rights of Children with Disabilities, Dismisses Appeal Due to Lack of Evidence**

The Court of Appeal<sup>1</sup> has reaffirmed that children with disabilities must not face discrimination in gaining admission to public educational institutions, in line with Article 12 of the Federal Constitution and Section 28 of the Persons with Disabilities Act (PWDA).

However, the Court unanimously dismissed an appeal brought by the parents of a child with learning disabilities, finding that they had failed to prove their claims on a balance of probabilities, and upheld the High Court's earlier decision.

### **Background of the Case**

The case concerned complaints by parent that a public special education school and the education authorities had failed to provide her child with appropriate education, facilities, trained staff, and protection from alleged bullying. She argued that these failures amounted to discrimination and breaches of constitutional and statutory duties.

The appellants sought multiple court declarations, including claims that the school had not complied with national education standards, failed to carry out proper screening and assessments, lacked qualified special education teachers, and did not provide a structured curriculum suitable for children with disabilities.

### **Key Issue Before the Court**

The central issue was whether the appellants had produced sufficient evidence to demonstrate that the respondents had discriminated against the child in violation of Article 12 of the Federal Constitution and had breached their obligations under Section 28 of the PWDA by failing to provide equal and appropriate access to education.

### **The Court's Decision**

The Court of Appeal dismissed the appeal in its entirety and made no order as to costs. It agreed with the High Court that the appellants had not substantiated their allegations with credible and admissible evidence.

### **Court's Reasoning**

The Court clarified that Article 12 prohibits discrimination in admission to public educational institutions, but found no evidence that the child had been denied admission or treated differently at the point of entry into the school.

While the Court acknowledged that Section 28 of the PWDA places a duty on education providers to ensure equal access and reasonable accommodation for children with

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<sup>1</sup> Muhammad Adam Yusof Abdul Hafiz via Noreda binti Mohd Nor v Special Education School Section 17 Shah Alam & 3 Ors Civil Court of Appeal Case No W-01(NCvC)-74-02/2023 judgment issued 4 August 2025

disabilities, it held that the appellants had failed to prove that these obligations had been breached in practice.

The Court made several significant findings regarding the case. Firstly, the allegations of bullying were not established, primarily because the evidence relied upon was hearsay and there was a lack of direct testimony from the child. Additionally, the notes and journals written by the child were considered inadmissible, as they required the child's testimony for validation. Lastly, the expert evidence presented by the appellants was deemed insufficient due to the witness lacking the necessary qualifications and failing to conduct a personal assessment of the child.

The Court emphasised that decisions must be based on facts and evidence, not sympathy or allegations alone.

### **Duty of Care and Bullying**

The Court reiterated the established legal principle that schools and teachers owe a duty of care to students, including children with disabilities. Bullying, the Court stressed, has no place in any education system.

The Court explained that a school is only responsible for bullying if there is evidence that bullying actually happened, that the school did not take reasonable care to prevent it, and that this failure led to or significantly added to the harm experienced by the victim.

In this case, the Court found that these elements were not established.

### **Limits of Judicial Intervention**

The Court also highlighted that questions relating to the adequacy of education policies, curriculum design, and standards are primarily matters for the legislature, executive, and education experts, not the courts. Judicial intervention is limited where there is insufficient evidence of legal or constitutional breach.

### **Why This Case Matters**

The decision is significant for several reasons, highlighting the legal protections afforded to children with disabilities within the educational landscape. Firstly, it reaffirms the constitutional rights of these children against educational discrimination, thereby reinforcing the importance of inclusivity and equal treatment in academic settings. Secondly, the ruling confirms that schools and education authorities hold a duty of care towards all students, including those with special needs, emphasising the responsibility of educational institutions to provide a safe and supportive environment. Finally, the decision clarifies that claims made against schools must be backed by credible and admissible evidence, even in sensitive scenarios involving children and disabilities, thereby ensuring that due process is upheld and that allegations are subject to scrutiny based on factual substantiation. This multifaceted affirmation not only strengthens the

rights of students with disabilities but also delineates the obligations of educational institutions in fostering an equitable educational framework.

### **SUHAKAM's Role and Involvement**

SUHAKAM has monitored this case through a *watching brief* since the High Court proceedings in 2019, and continued its monitoring during the Court of Appeal proceedings in 2025.

In addition, in 2022, SUHAKAM filed a submission as *amicus curiae* (friend of the court) at the High Court level, to assist the Court in considering the legal and human rights issues concerning children with disabilities and the State's obligations under the constitutional and statutory framework. SUHAKAM also send another submission in the Court of Appeal level.

The *amicus curiae* submission was filed by SUHAKAM's panel lawyer (Mr. Tay Kit Hoo from Low & Partners).

### **SUHAKAM's Recommendation**

Following the judgment, SUHAKAM recommends that the Government of Malaysia embody the spirit of these principles expounded by the judiciary, by undertaking comprehensive disability assessment procedures in education, and for the Ministry of Education to systematically collect and analyse data on children with disabilities, to better address the lived experiences of children with disabilities in school and learning institutions, whether public or private.

### **What Happens Next**

With the appeal dismissed, the Court of Appeal's decision stands as final unless further action is taken at the Federal Court level.