

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi
Phone-011-23216002-04, Telefax: 011-23216005,
Email: comdis.delhi@nic.in

[Vested with powers of Civil Court under the
Rights of Persons with Disabilities Act, 2016]

Case No. 1029/1032/2019/07 / 8898-8900 Dated: 18/12/2019

In the matter of:

Ms. Shailja Sharma,
E-mail: shailja2506@gmail.com

..... Complainant

Versus

The Principal,
Air Force Golden Public Institute,
Suborto Park,
New Delhi-110010.
E-mail: principal.afgji@gmail.com

..... Respondent No. 1

The Director,
Directorate of Education,
Govt. of NCT of Delhi,
Old Sectt., Delhi-110054

..... Respondent No.2

Date of Last Hearing 12.12.2019

Present: Ms. Shailja Sharma, complainant.

Ms. Ruchita Karthikeyan, Admn. Officer and
Sh. A. K. Shukla for respondent No. 1.

Dr. Mukesh Chand, DDE(IEB), and Dr. Ajay K. Singh
State Coordinator for respondent No.2.

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ORDER

The above named complainant, mother of Master Satvik, a child with Autism Spectrum Disorder (ASD) vide her email dated 15.07.2019 addressed to Ms. Poonam S Rampal, Principal of Air Force Golden Jubilee Institute, Subroto Park, New Delhi with copy to this Court, pointed out that she has been requesting for sports, arts, music and computer teacher for children of Special Wing, which has to be provided as per Section 16 of the Rights of Persons with Disabilities Act, 2016 (the Act). She also pointed out that a substitute computer teacher who is technically a speech therapist does not serve the purpose, which is not being done in case of children without disability. She requested for maintaining inclusiveness in the school.

2. The matter was taken up with the respondent No.1 for her comments with direction to ensure that the sports facilities etc. as mandated in Section 16 of the Act were provided to Master Satvik and other children with disabilities on equal basis with others vide letter dated 18.07.2019.

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3. Ms. Poonam S. Rampal, Principal, Air Force Golden Jubilee Institute vide her letter dated 05.08.2019 submitted as under:

"Sub: DISCRIMINATION AGAINST CWSN AND NORMAL CHILDREN."

1. Refer your mail date 1029.1032/2019/07/3588 dated 18 Jul 2019.
2. The following is submitted for your kind consideration:

Sports Teacher : Special Wing – Students of Special Wing participated in number of sports activities like bouche, skating and cycling etc. They participate in sports event held during Annual Sports Day along with General Wing students. Also they have participated in Special Olympics and have brought laurels to school.

Dance & Music : There are Special Educators who are competent in imparting dance and music education to students. They teach and make them perform on various occasions like class/school assemblies, inter-house competitions, inter-school competitions, all festivals like Holi, Diwali, Lohri, Eid, Janamashtmi, Christman, Independence Day etc. Students present a full fledged cultural event along with General Wing students during Annual Day of the school every year.

Computer classes : These are taken by Special Educators / Therapists who have computer knowledge and qualifications.

3. It may be noted that as the teacher student ratio is 1:10 for Special Wing, the Special Educators when recruited are looked for additional qualifications at time of recruitment only so that they can impart multiple disciplines along with routine Special Educator's role.
4. School follows pattern of inclusive education. Every year few Special Wing students are integrated into General Wing and there have been instances where in students have passed out from General Wing – Secondary / Senior Secondary classes inspite of having admitted in Special Wing in their initial stages.
5. Interest of Special Wing students is of prime importance to our school. It is ensured that these students participate in activities along with General Wing students and interact with them as a regular basis.
6. School has a club by name of 'Club for Cause' where in students of Senior and Primary Wing interact with Special Wing students on a regular basis

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and conduct activities with them like paper bag making, art, painting, music and dance etc.

7. *During all school event SUPW teachers of General Wing impart teachings to Special Wing also and make them perform on stage along with General Wing students. Sports teachers of General Wing give training for march-past and saluting to these students and an independent contingent of Special Wing participates in school March past.*
8. *All efforts are made from school to provide all facilities to the Special Wing students and due support is taken from students, teachers and staff of General Wing.*
9. *School provides all possible facilities to Special Wing students via available resource and make optimal utilization of same.*
10. *Submitted.*

*(Poonam S Rampal)
Principal"*

4. In her rejoinder dated 31.08.2019, the complainant questioned the veracity of the reply with regard to sports training under a trained sport teacher. She also pointed out that it was clear from the reply of the respondent No. 1 that the school was following old pattern of 'integration' and not 'inclusion'. Further, only a few children are selected to participate in the competitions and Annual Day functions. Her son, Master Satvik did not participate in Annual Function for seven academic years, which is against Section 16 of the Act. She also questioned the contention of respondent No. 1 that support of mainstream teachers was taken for Special Wing and pointed out that Special Wing was not functioning as per norms. She also enclosed copies of notes between

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her and the school which indicate that there were no fixed computer and sports teachers for Special Wing.

5. Upon considering the written submissions of the parties, a hearing was held on 01.11.2019. During the hearing, it was mentioned that the school has been sanctioned the CSR funds by Indian Oil Corporation Limited (IOCL). The complainant suggested that the existing resources of the school and the said CSR funds can be used effectively for :

- Sports;
- Computer;
- Extra-curricular activities like music, dance and arts etc.
- Individual Education Plan (IEP) with respect to computer education;
- Assistive devices and use of technology for overall development of children with disabilities; and
- More inclusive activities.

6. Ms. Ruchita Karthikeyan, Admn. Officer and Sh. Amresh Chandra, Head Master of the Special Wing who appeared on behalf of the respondent submitted that the school had employed the necessary teaching staff to take care of the children with disabilities. The Individual Education Plan (IEP) is developed in consultation with the parents and the team. They gave a detailed account of the infrastructure and other resources available in the school and propose to augment the technology based infrastructure with the help of the funds that would be

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available from IOCL in current financial year. They were ready to involve the parents including Smt. Shailja Sharma for any improvement that can help children of the school in general and children with disabilities in particular.

7. The parties were advised to sit together with other parents and to submit a report to this Court indicating the specific areas where the changes are proposed by **22.11.2019** and the matter was fixed for hearing on 28.11.2019 which was rescheduled on **12.12.2019** on the request of respondent No, 1.

8. Vide email dated 21.11.2019, respondent No. 1 submitted that a meeting was held in the Institute on 13.11.2019 with parents and HM, Special Wing to decide IEP of individual student and following points were discussed in detail:

"(a) Carry forward / dropout goals should be re-evaluated for different methods and or motivation level of child or that goal should be dropped after 02 months in consultation with parents of respective child.

(a) Once smart boards are installed, IEP for smart classes will also be construed in consultation with parents.

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(b) Parents submitted that they would pitch in by looking for volunteers / NGOs for imparting skills like computer, yoga, therapies etc. to the students.

(c) The meeting was very fruitful and helped both parents / students and Institute to work together on common platform for betterment and growth of our students."

9. As the status report of respondent No. 1 dated 21.11.2019 did not address the important issues of sports, computer and music and art teacher for children of Special Wing that the complainant had raised, Department of Education, Govt. of NCT of Delhi was impleaded as respondent No. 2 to give necessary inputs in the matter so that the issues were addressed properly.

10. During the hearing on 12.12.2019, complainant reiterated her request and further added that her child should be ensured equality and equity and all the resources that are needed for him as mandated in Section 16 of the Act.

11. Ms. Ruchita Karthikeyan, Admn. Officer and Sh. A.K. Shukla, Speech Therapist who appeared on behalf of respondent No.1 submitted that the children with disabilities of Special Wing have a physical education period of 45 minutes immediately after morning assembly. All Special Educators and Physical Education teachers teach

sports activities to children with disabilities of Special Wing alongwith other students. As submitted during the last hearing, the computer training is imparted to children with disabilities in Special Wing by computer trained personnel of Indian Air Force. Further, in compliance with directions of this Court vide RoP dated 1.11.2019 the children with disabilities of Special Wing are being taught music, dance and art by the teachers of regular classes.

12. Dr. Mukesh Chand, DDE (IEB) and Dr. Ajay K. Singh, State Coordinator appeared on behalf of respondent No. 2 and clarified that the Right of Children to Free and Compulsory Education Act (RTE), 2009 as amended in 2012 and the Rights of Persons with Disabilities Act, 2016 (RPwD Act) mandate that children with disabilities need to be taught in the regular classes. As per the policy of the Govt. and its circulars, the practice of having a Special Wing for children with disabilities which is being adopted currently, needs to be stopped in a phased manner in consultation with the parents. The resources of Special Wing including the special education teachers, therapists etc. are to be used as resource room / resource centre to bridge the gap of implications of disability in learning of children with disabilities by providing support to the mainstream teachers and buddies (peers). Continuation of Special Wing in a mainstream school for long will thus be against the provisions of the RPwD Act and the RTE Act.

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13. They further stated that in order to meet the specific needs of children with disabilities in respective disciplines like music, dance, computer, sports etc. the mainstream teachers must be trained and their capacity be built to enable them to teach children with disabilities on equal basis with other children. Further, the goals for each child with disability have to be set based on his / her potential and adaptability from class 1 to 8 or upto the age of 18 years. The practice of having separate teachers and a separate section amounts to isolation of children with disabilities and is against the inclusive environment which has to be stopped. The IEP of each child with disability must be reviewed in consultation with the parents from time to time. The IEP would also get modified in accordance with the achievement of the goals by the child.

14. The Directorate of Education, Private School Branch, Old Sectt., Delhi vide Order No. F. 16/DDE(IEB)/Admn.Cell/2019/10839-43 dated 28.08.2019 has directed the **Private Unaided Recognized Schools** of Delhi to implement the inclusive education in line with the provisions of the RPwD Act. The said order is reproduced below for better appreciation by respondent No. 1:

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"The Rights of Persons with Disabilities (RPwD) Act, 2016 was passed by the Parliament of India in the year 2016 and came into force w.e.f. 19.04.2017. The Delhi Rights of Persons with Disabilities Rules 2018 came in force w.e.f. 27.12.2018 vide which Section 2(m) of the Rights of Persons with Disabilities Act, 2016 states that "Inclusive Education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.

And Section 16 of the RPwD Act, 2016 provides that the appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognized by them provide inclusive education to the children with disabilities, hence to achieve this, all educational institutions are required to comply & act as per provisions of section 16 of said Act in letter and spirit.

And Section 89 of the RPwD Act, 2016 states that any person who contravenes any of the provisions of this Act, or of any Rule made there under shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

In the larger public interest, Directorate of Education is reiterating the directions issued vide Order No. DE.Act.15/WPC/4618/2012/6961-70 dated 19.02.2013 passed by the Honourable High Court of Delhi in WPC No. 4618/2011 titled as Social Jurist, a Civil Rights Groups Vs. Govt. of NCT of Delhi whereby the Hon'ble Court directed as under:-

"We accordingly allow this petition and direct all the recognized aided and unaided private schools in Delhi to

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appoint Special Educators and to make their buildings/school premises barrier free so as to provide free movement/access to children with disabilities. We further direct the DoE, Govt. of NCT of Delhi to ensure compliance of the directions issued by this Court and to take action for de-recognition against the erring school. We however, grant time up to 31st march, 2013 to the said school to, if not have already done, make their school premises barrier free/access free. We have granted the said time having regard to the fact that Section 19 of the RTE Act has given time of three years from 1st April, 2010. We further grant time of two years to appoint Special Educators. However, schools where children with special needs are already admitted or will be admitted hereafter shall immediately make provision for Special Educators and further ordain that no school shall refuse admission to children with disability for the reason of not employing Special Educators or not providing barrier free access in the school premises".

Despite issuing the above said order, irregularities in admissions of children which is a matter of serious concern with Disabilities Category have come to notice. The matter has also been taken note of by the State Commissioner for Persons with Disabilities, National Capital Territory of Delhi.

Therefore, all the Principals/ Managers of Private Unaided Recognized Schools of Delhi are hereby directed to launch a Special Drive to examine and verify the admission records of academic sessions 2017-18 to 2018-19 and ensure that all admissions under the CWSN Category have been done strictly as per guidelines issued by the Government from time to time in this regard and the students those admitted are provided with effective Inclusive Education in the line of the provisions made in the RTE Act 2009 and above said provisions of the RPwD Act, 2016.

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Any lapse in this regard is ground to attract penalty as per the RPwD Act & the DSEAR, 1973.

This is issue with the prior approval of competent authority.

(YOGESH PRATAP)
Deputy Director of Education (PSB)"

15. Vide another order No. F.43/DDE(IEB)/ Admn.Cell/2019/8916-8924 dated 22.10.2019 issued by the Director (Education), though meant for Govt. schools of the Directorate of Education, gives guidelines for effective use of the services of Trained Graduate Teacher – Special Education Teachers (TGT-SETs) to facilitate inclusive education to children with disabilities. It also contains an illustrative / sample time-table and Head of Schools (HOS) of all the Govt. Schools have been directed to ensure that TGT-SETs implement the time-table, thus prepared in letter and spirit. Annexure-II of the said order also contains the guidelines for implementation of the time table and work allocation for schools that have more than one TGT-SETs and to ensure distribution of work among TGT-SGTs. The order clearly emphasized full involvement of the Head of Schools / Principals. The sample time-table details the plan of activities, resource room teaching, inclusive class room teaching, co-scholastic activities of children

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with disabilities, resource room teaching with miscellaneous category teachers, coordination with other teachers, counseling of children with disabilities or peer groups, parental counseling, school club activities from Monday to Saturday. It also gives details of key areas given in the sample time-table. The general guidelines for preparation of time-table and work allocation among the TGT-SETs at Annexure-II is a good resource for guidance of every school whether Govt. or Private.

16. The intent in the RPwD Act, RTE Act Government's policy of inclusive education and the schemes for its implementation like Sarva Shiksha Abhiyan (SSA) / Samagra Shiksha is amply clear that children with disabilities have to be taught together with rest of the children with necessary adaptations and provision of equitable resources. If inclusive education is to be truly implemented, it is not only the special education teachers or special wings but also full involvement and commitment of the Principals of the schools, the Managements and mainstream teachers is essential. It was for this reason that a workshop was organized for Principals and Management Functionaries of private schools on RPwD Act with focus on inclusive education through SCERT, Govt. of NCT of Delhi at Thyagraj Stadium on 09.01.2019. Such workshops need to be organized more often. It has

Copy of the report (Annexure-III)
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been observed that Special Education Teachers alone are made responsible for education of children with disabilities in most of the mainstream schools which is completely against the spirit of the inclusive education and biggest stumbling block to achieve the objective of inclusion.

17. As per my observation, true involvement of the Principals, the mainstream / regular teachers and management functionaries has been missing as also observed during the proceedings of the case.

18. 'Integration' was envisaged in the Persons with Disabilities Act, 1995. With the coming into effect of the RPwD Act particularly the provisions in its Section 16 and Section 31, it is the choice of the child / parent to option for inclusive set up or special school for a child with disability. Section 31 is reproduced below:

"Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighborhood school, or in a special school, of his choice."

19. Respondent No. 1 therefore needs to follow the guidelines and the orders of the DOE. It also needs to be noted that the educational institutions are duty bound to provide education and opportunities for sports and recreation activities equally with others which the complainant has demanded. Additionally, Section 16 also mandates the appropriate government and local authorities to ensure that all the

educational institutions funded or recognized by them, provide inclusive education to children with disabilities and shall, among other things, provide reasonable accommodation according to the individual's requirements, provide necessary support individualized or otherwise in environments that maximize academic and social development consistent with the goal of full inclusion, detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them.

20. While writing this order I am also conscious of the fact that the strategies and methods for implementing inclusive education are evolving processes and may vary from school to school and have to be modified to suit each child with disability, being unique. But the basic principle of teaching and learning outcomes in respect of each child has to be ensured and should at no cost be compromised. The objective of the legislation is to ensure full inclusion of children with disabilities and also to ensure that they receive quality education on equal basis with others. The concept of inclusive education has to be understood and implemented as envisaged in the RPwD Act. All the necessary arrangements therefore must be made by the educational institutions in NCT of Delhi as mandated in Section 16 of the Act and in the Order dated 28.08.2019 of Directorate of Education.

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21. In light of the above discussion, the following recommendations are made:

- (i) Respondent No. 1 should ensure teaching of children with disabilities in an inclusive set up as envisaged in the Rights of Persons with Disabilities Act, 2016 and the orders issued by respondent No. 2 and ensure adequate human and other resources on equal basis with other children. This means there should be no differentiation in provisioning of resources / teachers including for teaching of computer, sports, music and arts between the children of mainstream and Special Wing. The mainstream teachers should be trained and oriented towards the needs of children with disabilities in a time bound manner.
- (ii) Respondent No. 1 should initiate the process of converting the Special Wing into a resource room / resource centre and gradually include children with disabilities in the mainstream wing.
- (iii) IEP and the goals for each child should be fixed and reviewed from time to time as required by respondent No. 2.
- (iv) It should be ensured that children with disabilities including Master Satvik are given equal opportunity not only for learning in the academics but also for extra-curricular activities.

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- (v) Respondent No. 1 should also examine and intimate the decision about developing the school as a model inclusive school for replication.
- (vi) In light of the inadequate awareness and understanding of the system of inclusive education, Directorate of Education should take steps to mandate every Principal, Head of School and the key functionaries of the management to be trained on the provisions for inclusive education in the Rights of Persons with Disabilities Act, 2016 and Right to Education Act, 2009 as amended in 2012 and the orders issued by Directorate of Education and CBSE etc. from time to time.
- (vii) Directorate of Education may either issue separate guidelines for Private Unaided Recognized Schools of Delhi as issued for the Govt. Schools of Directorate of Education vide order dated 28.08.19 or direct the Private Unaided Recognized Schools to follow the order dated 28.08.2019.

22. This Court be informed of the action taken on the above recommendations within three months from the date of receipt of this order as required under Section 81 of the Act which is reproduced below:

"Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause

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(b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person."

23. The complaint is disposed of.

24. Given under my hand and the seal of the Court this 18th day of December, 2019



State Commissioner for Persons with Disabilities

(Signature)
(T.D. Dhariyal) 18.12.19

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