

**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.1320/1032/2019/12/9167-9169 Dated 31/12/2019

In the matter of:

Suo-Motu

Versus

**The Principal,
Sanskriti School,
Dr. S. RadhaKrishnan Marg,
Chanakyapuri,
New Delhi, Delhi-110021**

.....Respondent No.1

**The Director,
Directorate of Education,
Old Sectt., Delhi.**

..... Respondent No. 2

ORDER

It was brought to the notice of the State Commissioner for Persons with Disabilities that Sanskriti School, Dr. S. Radha Krishnan Marg, Chanakyapuri, New Delhi admits children with disabilities and also provides good facilities for teaching and learning. There are some important issues which should be addressed in light of the provisions in the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as the 'Act'.

2. The parents of children with Autism Spectrum Disorder (ASD), Intellectual Disability and Cerebral Palsy have to pay additional charges for therapies, arrange for shadow teacher/Aya at their own cost, make

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

their own transportation arrangements. Such children are not allowed to attend classes for the full duration of the school. Consequently, they get excluded from many activities available to other children in the school. The parents, as in many other cases, do not wish to file formal complaints and the State Commissioner for Persons with Disabilities has decided to take up the matter suo motu vide show cause-cum-hearing notice dated 11.12.2019. The respondents were directed to show cause why they should not stop forthwith the practices mentioned in Para 1 of the said notice which are against the provisions of the Act and to submit their versions by 23.12.2019. They were also directed to appear for hearing on 24.12.2019.

3. Sh. Sidharath Nath, Advocate on behalf of respondent no. 1, Sanskriti School filed written submissions dated 23.12.2019. On his request, he was also heard on that day.

4. Respondent no. 1 has submitted a detailed reply responding to each of the issues mentioned in para 1 of the notice. The point wise response is reproduced below:-

"Parents are required to pay additional charges for therapies

10. As highlighted above, there are as on date a total of 123 students in our school who can be considered to have some form of disability. Out of these, 70 (~57%) children suffer from a minor disability and do not pay anything in addition to what any other student pays. Further, 17(~14%) students with significant disabilities are placed in the LC and their entire fee for tuition, extra-curriculars, books, stationary etc. is waived, and borne by the school and the parent society. Only 36(~29%) students with disabilities are placed in the LC and pay anything in addition to the fees other students pay i.e. the aforementioned earmarked fee. It may be reiterated that the earmarked fee is levied on every paying student in the school, and it differs based on the nature of facilities the child is using. Thus, every student in class XI pays a higher

earmarked fee than the 36 children with special needs, due to the outstation trip in class XI. This fee is no different from the fee that a child would pay for extra coaching in a sport after school hours. It stands to reason that any child, disabled or not, who is utilizing additional facilities would have to pay some amount towards those facilities.

11. It may be reiterated that the school and the parent society are not for profit organizations and the amounts collected still do not cover even a fraction of the costs incurred by the school. The Civil Services Society which is the management of Sanskriti School does not have any source of income other than the school fee which is completely used up in running the school and is credited to the school account. As of now the school is running at a substantial loss. Reducing the amount collected would have the extremely unfortunate impact of reducing the additional tailor-made programs and the kind of infrastructure the children can be provided with and would generally harm the education and opportunities offered to all the children. Unlike a commercial enterprise, our school does not have any surplus which can be dipped into to make up the shortfall, and such action would cause immeasurable harm to all the students. Further the educational facilities provided to the children with special needs are subsidized by other children and a reduction in their earmarked fee would have an impact on fee from other students.

12. It may also be highlighted that s.16 of the RPWD Act, 2016 (hereinafter referred to as "the Act") inter alia requires equal treatment and does not mandate all facilities to be provided for free. This may be contra-distinguished with s. 7 (4) (c) – the right to free legal aid, s. 24 (3) (f) – the right to free medical services, s. 25 (1) (a) – the right to free healthcare etc. Thus, where the Parliament intended to mandate free services, it was specified clearly in the Act. The absence of any indication for free services in s.16 makes it abundantly clear that these services are not mandatorily to be free. This is for the simple reason that making them free would deprive the school of a source of funding to partially meet the salaries of the special educators, the cost of the infrastructure and the overall facilities provided to these children. The Parliament could not have intended the overall impact of the

statute to be deleterious to the educational facilities for these children. Moreover, it is extremely well settled law that only equals can be treated equally, and when a child is using an additional facility (whether it is extra sports coaching or a facility for a disabled child), the cost of the facility has to be borne by someone. As has been held in countless judgments and recently reiterated by the Hon'ble Delhi High Court in *Deepshikha v. Medical Council of India*, 2015 (150) DRJ 387 in the context of alleged discrimination against persons with locomotor disability of upper limbs:

"Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege." (emphasis supplied)

Thus, it is only equals who can be treated equally, and if there are reasonable, extraneous reasons for a particular action, the same will be upheld by the Courts.

13. It is worth reiterating at this point that the abovementioned costs for the LC are substantially borne by the school and the parent society, and the fees collected only make up a small amount. However, both these bodies being not for profit unlike a commercial enterprise, no reserves exist to meet the costs and reducing the fees collected would have a direct and adverse impact on the facilities offered to the entire LC.

Parents have to arrange for shadow teachers/ayas at their own cost

14. As has been highlighted above, our school provides 16 special educators with the sole responsibility of taking care of the children with special needs and helping them acclimatize and learn skills. In addition, the school also employs ayas whose sole responsibility is to take care of these children, many of whom are

Court of
National
2015 (150) DRJ 387
2015 (150) DRJ 387

not toilet trained. The Teacher – Student ratio in the LC is 1:3 i.e. 1 teacher for every 3 students.

15. Keeping aside financial considerations which will be dealt with subsequently, it is simply impossible for the school to provide individual ayas / shadow teachers to each child with special needs as that would prove extremely disruptive to the school. In addition to this, it would be impossible for the school to monitor each and every such aya / shadow teacher employed to ensure their conduct is conducive to the development of the child. Moreover, in certain cases parents prefer to send an aya from home since the child is comfortable with that person and cannot at this stage be asked to familiarize himself / herself with new people. This is a part of the therapy for some students as they come with a familiar person everyday and are at ease. Naturally the school cannot pay for these people, particularly the ones who come from home. It may be repeated that the school and the parent body are not for profit bodies, and simply do not have the funds to provide individual attendants to each of the ~120 children with disabilities.

16. I would also like to point out that because of the exemplary facilities offered by our school for children with special needs, we have an extremely large number of such children compared to most other schools. While it may be possible for a school to hire 2 attendants for their 2 students with special needs, at our school we have ~120 such children and it would be impossible to do so for financial reasons, and to ensure a safe and healthy environment for the children. It is thus the school's policy to provide a total of 3-4 ayas, and for those parents who are keen to have a personal attendant with their child, the school permits them to send such a person in exceptional cases. This is mainly for children who have severe needs and may require one on one supervision at all times as they might harm themselves or another student.

Parents are required to arrange transportation for their wards and their attendants

17. At the outset, it may be mentioned that the school provides transportation in the form of school buses which all children including the LC children can avail. In certain cases, where parents prefer for their child to commute via private transport, the school

permits the children to do so for all category of students. However as mentioned above, our school has an extremely large number of children with special needs. Even if we exclude the children with minor disabilities, there are still 53 such children with significant disabilities. Each child also lives in a different location and it is frankly impossible for the school to hire 53 different cars (plus a lady guard or attendant per car) for the purposes of each child. Our school simply does not have the funding to do so. Where parents feel that their children need individual transportation, we permit the parents to arrange the same.

Children with special needs are not allowed to attend the full duration of classes

18. As has been highlighted above, after the admission process, our special educators prepare an individualized plan for each child based on the needs of the child. It is important to note that many children with special needs are simply not accustomed to being in school for a full day and forcing them to do so would be extremely harmful to their development. Thus, a plan is mapped out in consultation and with the consent of the parents, to gradually acclimatize the child to spending long hours in school. The amount of time the child spends is gradually increased to let the child develop at his or her own pace. The final aim of the special educator is to equip the children with skills to attend a full school day. Needless to say while in school, they are a part of every school activity and all extra curriculums available to all children at Sanskriti. Today, only 14 students have reduced hours at the school. A list of each student along with the reasoning is annexed herewith as Annexure A-5.

19. An example of the hugely positive effect such graded acclimatization can have, is one ex-student of ours who was wheelchair bound and initially admitted at the LC. Gradually he was integrated into mainstream classes and he graduated Class XII with 100% in Legal Studies. Currently, he is pursuing Political Science (Hons.) at Hindu College, Delhi University. A brief write up of his progress at our school is annexed herewith as Annexure A-6."

6.
Counsellor, Sanskriti School
New Delhi
28-01-2019

5. I have carefully gone through the reply and perused all its enclosures particularly --

Annexure A 2 : Sample of Individualized Education Plan.

Annexure A 3: Affidavits of three parents confirming their satisfaction with the facilities provided by the school.

Annexure A 4 : Detailed note on Services of Learning Centre which gives details about (i) initial assessment of the child identified with Special Needs; (ii) assessment of the child for placing him/her in Learning Centre (LC) or mainstream inclusive classrooms; (iii) the Individual Education Plan (IEP) for placing of children in the CBSE Board with or without exemption, open School Training (NIOS) and Functional Curriculum focusing on life skills with emphasis on pre-skills and vocational skills. It also gives details about the team of 20 qualified Special Educators along with Speech and Occupational Therapists having RCI approved qualification; (iv) the facilities and infrastructure; (v) the Course Content Methodology to teach namely, Curriculum Adaptation - Instructional and Ecological. It has also been mentioned that periodical workshops for parents and students including the students of Learning Centre are also organized. Pictures of children with disabilities enjoying the outdoor trips have also been enclosed.

Annexure A 5 : It is the list of 14 students who have reduced hours at the school which gives the duration in the school and also the reasons for reduced duration.

Annexure A 6 : It gives brief right up of one of the students from the Learning Centre who passed class 12 with 100% marks in Legal Studies and is now studying in Hindu College. This is stated


Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

that it was possible by tweaking and adjustment of the education plan for him as per his needs.

6. Section 16 of the Act which deals with duties of Educational Institutions provides as under:

"16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- (ii) make building, campus and various facilities accessible;
- (iii) provide reasonable accommodation according to the individual's requirements;
- (iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;
- (v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- (vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- (vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- (viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.


Secretary
National Institute of Educational Planning
New Delhi
25-B, Wazirpur Road, New Delhi-62

7. Section 17 of the Act mandates the appropriate Govt. and the local authorities to take satisfactory measures for the purpose of Section 16 of the Act to promote and facilitate in Inclusive Education. The measures to be taken are as under:-

"(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to 12 fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities

*Court of Coordination (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Main Chandra Road, New Delhi-02*

such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required."

8. Section 31 of the Act which is about special provisions to be made for free education of children with Benchmark Disabilities, is reproduced below:

"(1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 2009), every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years."

9. After going through the written submissions and hearing the advocate for respondent No 1, it is amply clear that Sanskriti School is complying with its duties as educational institution as mandated in Section 16 of the Act. As regards the specific measures to be taken under Section 17 of the Act and the mandate to ensure the Right to Free Education in a neighbourhood school or any Special School of the choice of the child with Benchmark disability till he attains the age of 18 years, it is the responsibility of the respondent no. 2.

10. In another Case No. 1029/1032/2019/07 involving the issues concerning implementation of inclusive education, the representative of Directorate of Education clarified that—

"....the Right of Children to Free and Compulsory Education Act (RTE), 2009 as amended in 2012 and the Rights of Persons

Court of
National

25.11.2019

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."

11. Three of the 12 recommendations made vide the above Court order dated 31.12.2019 in another Case No. 824/1014/2019/04 filed by Ms. Reshma Perveen, are as under:

"(iii) Since the number of students with different disabilities in schools is dynamic, provision of Special Education Teachers per school would not have any rationale to continue for long and hence will not be a reasonable criterion. The number of Special Education Teachers in a particular disability should be determined based on the generally accepted pupil teacher ratio of 1:8 for children with Cerebral Palsy, visual impairment and hearing impairment, 1:5 for children with intellectual disability, ASD and Specific learning disabilities; and 1:2 for Deaf-Blind and a combination of two or more of the seven disabilities mentioned above.

(vi) Respondents no. 1 to 6 (DoE, 3 DMCs, NDMC and DCB) should either set up resource centre in each school or for a cluster of closely located schools, not beyond a radius of 2-3 KMs where all teaching, learning material/resources including the Special Education Teachers of different speciality should be available for deployment in the schools as per need to ensure that every child with any disability is ensured quality education on equal basis with others. Equality as well as equity must be ensured.

(ix) All the mainstream teachers at all levels, i.e. Pre-Primary, Upper Primary, Secondary and Sr. Secondary Level must be exposed to the needs of children with different disabilities by

mandatory training of a given duration. DoE should do it in consultation with RCI within three months from the date of receipt of this order and respondent No1 to 6 should plan the training in a time bound manner and complete the training within a reasonable period of time."


12. Framing of model guidelines and the quality indicators for inclusive education and inclusive schools for adoption /adaptation as per local conditions has also been recommended. In view of the above and for the sake of uniformity, the teacher-pupil ratio should not be less than what has been recommended in that case and should be ensured by all schools including respondent no. 1. Respondent no. 2 should also address the issue of special wing/learning centre etc.

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

(i) Directorate of Education should consider defraying certain costs of essential supports like therapies or make arrangements for them so that no child with disability studying in any school (govt. or private) should be deprived of quality education on equal basis with other children studying in a particular school for want of money and no child with Benchmark disability or his/ her parents should feel discriminated. Respondent no. 1 should also suggest to respondent no. 2 as to how the financial burden on the parents who cannot afford such expenses, can be reduced.

(ii) Respondent no. 1 should consider and make efforts that the facility of shadow teacher/Aya is provided to such children whose parents find it difficult to afford.

(iii) Use of school transport (which is part of inclusion and beneficial also to children without disability), should be left to the choice of the parents.


Director of Education
District of Jammu
Jammu, 180 001

(iv) Respondent no. 1 should invest more time on children with ASD, Intellectual Disability, Specific Learning Disabilities, etc. in identifying and channelizing their strengths and mainstream them. This is the real challenge of inclusive education. It is much easier for any school to teach and manage children with mild and moderate disabilities in mainstream classes. The real test of an inclusive classroom or an inclusive school is to bring about real improvement in the children with severe and profound ASD, Intellectual Disability, Deaf-Blind etc. Reduced school hours to 1-2.5 hrs in respect of such children is likely to result in regression in their overall progress. Parents of such children in fact have no choice but to accept whatever is offered to them by the schools. The concerned Authorities and the Educational Institutions should appreciate the difficulty, anxiety and psychological trauma that such parents (particularly the mothers) have to undergo. They should be provided the reasonable accommodations as mandated in Section 16 of the Act.

14. Although Directorate of Education has not made its submission in this particular case, the Directorate has already made its submissions in similar cases as mentioned in para 10 above. Therefore the complaint is being disposed of with the above recommendations.

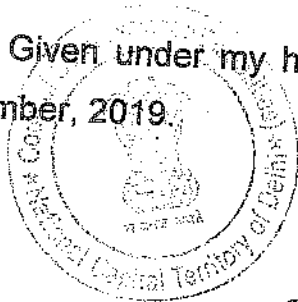
15. This Court be informed of the action taken on the above recommendations within three months from the date of receipt of this order as required under Section 81 of the Act which is reproduced below:

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

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

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."

16. Given under my hand and the seal of the Court this 31st day of December, 2019.



(Signature)
(T.D. Dhariyal) 31.12.19

State Commissioner for Persons with Disabilities

Copy to:

1. The Secretary, Department of Social Welfare, GLNS Complex, Delhi Gate, New Delhi-110002. Email: pssw@nic.in

Court of Commissioner (Disabilities)
Capital Territory of Delhi
Room No. - 1
25-A, Wazirpur Road, New Delhi-02
For information and necessary action as deemed fit.

(Signature)