

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER
1995

Re AB (specific issue; education)

MORGAN J

[1] This is an application by the father of AB for a specific issue order directing that the child attend a specified special school. Nothing should be published which might disclose the identity or location of the child or members of the family.

The statement of special educational needs

[2] The parents were married at the time of the child's birth so the father is entitled to make this application. They separated in October 2002 and in or about the same time, on 8 October 2002, the Board made a statement of special educational needs in respect of AB identifying the following needs.

1. Autistic spectrum disorder;
2. Severe learning difficulties (possibly);
3. Global developmental delay;
4. Communication difficulties (delayed expressive and receptive language and variable eye contact);
5. Limited peer group interaction;
6. Delayed motor development;
7. Delayed self-help skills;
8. Limited concentration and attention span;
9. Poor awareness of danger.

[3] The objectives of the special educational provision to be made for AB were then identified.

1. Develop early literacy and numeracy skills;
2. Improved communication;
3. Encourage positive interaction with peers;
4. Further develop gross and fine motor skills;
5. Encourage independence in daily living skills;
6. Extend concentration and attention span;
7. Raise awareness of danger.

The education plan included the following.

- A. Structured teaching programmes aimed at the development of play and early literacy and numeracy skills; E. G. the TEACCH programme;
- B. An individually structured language and communication programme to be devised in liaison with the speech and language specialist...
- C. activities designed to promote social interaction; these could include:
 - o the opportunity to participate in structured situations where specific skills such as sharing, turn taking, listening and attention are targeted;
 - o group based experiences which promote AB's inclusion by the group...
- D. Close liaison between home and school

Within the statement the Board then specified a named special school.

The provision of ABA

[4] The child resided with the mother after the parents separated and attended the named special school for the remainder of the academic year. In or about October 2003 the mother contacted PEAT (Parents' Education as Autism Therapists) and put in place a part time ABA (Applied Behaviour Analysis) course comprising 10 hours per week delivered by a psychology student. This was supervised by Dr Stephen Gallagher who was employed by PEAT as a consultant behaviour analyst from March 2001 and June 2007. Despite the statement expressly referring to the need for close liaison between home and school in the education plan the mother did not inform the special school about this part-time arrangement.

[5] At the annual review of the child's statement in April 2005 the mother indicated that she felt that the special school had not moved things on as fast as they should. She informed the principal in the summer of 2005 that she

was withdrawing the child from the school to educate him by way of a full-time ABA programme. That has remained the position to date and the course is being delivered by the same therapist who is now doing a part-time Masters on Behaviour Analysis supervised by Dr Gallagher who has now taken up a position within a university. The mother is pleased with the child's progress and notes that he socialises with adults and will tolerate his own peers. She has grave concerns that the child would lose skills if the programme were stopped. This fear is based on information supplied to her by Dr Gallagher.

[6] The Board have for some time been expressing their concern about whether the ABA programme is in fact meeting AB's educational needs. Dr Gallagher contends that AB is suited to an exclusive ABA programme. He relies upon research set out in a paper prepared by him. This has been an issue of some controversy and in or about 2002 the Department of Education for Northern Ireland set up an Autism Task Group. That Group recommended that a mix of teaching approaches best suited to the individual's educational needs was a better approach. Dr Gallagher takes issue with that report and he has provided me with a copy of PEAT's response to it. Essentially Dr Gallagher contends that the composition of the Group was biased against ABA and he refers to some research materials which he frankly accepts are now somewhat dated. I have not been referred to any recent research material.

[7] The Board have expressed, in particular, concern in respect of the child's peer group interaction and socialisation. This is an area of particular difficulty for autistic children generally and is expressly recognised in the identified educational needs and the objectives of the educational provision within the statement. At the annual review in April 2006 AB's mother stated that the child had few opportunities to interact with peers other than attending horse riding for the disabled. At the annual review in May 2007 AB's mother indicated that the child had some sort of socialisation with his extended family, through respite care, church, horse riding, trips to the swimming pool and local shops. The Board remained very concerned about his very limited interaction with the same age peers and the consequences for his social and emotional development. Mrs B stated that it was more important to her that AB's daily living skills had improved than his social interaction skills.

[8] Dr Gallagher stated that there is a lot of research to show that placing a child with other children does not itself lead to socialisation. It is necessary to put in place a programme in order to develop skills. The ABA programme is designed to give the child the skills to enable him to develop socialisation. Dr Gallagher envisaged the child moving to a group setting within a couple of years. If the child is to return to the school Dr Gallagher stated that there should be a person trained in ABA within the school to assist the child and his

attendance should be built up over time. Unless that provision was made there was a danger that the child could lose some of his skills. The child in this case is now nine years old. Dr Gallagher initially told me that he had never advocated one-to-one ABA for a child into his teens but then remembered that he had done so on one occasion. He stated that there was some research support for that position and referred to a 1999 paper.

The statutory background

[9] I am aware that Mrs B has requested a statutory assessment of AB's special educational needs in accordance with article 20 of the Education (Northern Ireland) Order 1996. That process may take a little time and may well involve an appeal to a tribunal. I consider, therefore, that the timescale for the resolution of that matter is uncertain.

[10] The education of the child is a matter which arises with respect to the welfare of the child and jurisdiction to make a specific issues order in respect of education is, therefore, found in article 10 of the Children (Northern Ireland) Order 1995. The obligation on the Board to make a statement for a child who is found to have special educational needs is imposed as a result of the assessment of those needs carried out under article 15 of the Education (Northern Ireland) Order 1996 and the content of the statement is provided for in article 16 of that Order.

" Statement of special educational needs

16. - (1) If, in the light of an assessment under Article 15 of any child's educational needs and of any representations made by the child's parent, it is necessary for the board to determine the special educational provision which any learning difficulty he may have calls for, the board shall make and maintain a statement of his special educational needs.

(2) The statement shall be in such form and contain such information as may be prescribed.

(3) In particular, the statement shall-

(a) give details of the board's assessment of the child's special educational needs, and

(b) specify the special educational provision to be made for the purpose of meeting those needs, including the particulars required by paragraph (4).

(4) The statement shall-

(a) specify the type of school or other institution which the board considers would be appropriate for the child,

(b) if the board is not required under Schedule 2 to specify the name of any grant-aided school in the statement, specify the name of any school or institution (whether in Northern Ireland or elsewhere) which it considers would be appropriate for the child and should be specified in the statement, and

(c) indicate any provision for the child for which it makes arrangements under Article 10(1)(b) otherwise than in a school or institution and which it considers should be indicated in the statement.

(4A) Paragraph (4)(b) does not require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child.

(5) Where a board maintains a statement under this Article-

(a) unless the child's parent has made suitable arrangements, the board-

(i) shall arrange that the special educational provision indicated in the statement is made for the child, and

(ii) may arrange that any non-educational provision indicated in the statement is made for him in such manner as it considers appropriate, and

(b) if the name of a grant-aided school is specified in the statement, the Board of Governors of the school shall admit the child to the school."

Conclusion

[11] For the father Mr Long QC submitted that the Board were the competent authority under the statute to make the statement and that the statement should thereafter prevail unless varied under the relevant appeal provisions or the reassessment procedure which can be instigated by a parent under article 20 of the 1996 Order. Mr Brian Fee QC for the mother submitted that the welfare issue was at large before the court and it was for the court to decide on the evidence what the interests of the child required.

[12] I consider that there is substance in each of the submissions. By virtue of article 16 (3) (a) of the 1996 Order the Board is required to set out the details of

its assessment of the child's special educational needs. Those details are the product of the assessment carried out under article 15 of the 1996 Order and in respect of which the appeal provisions under article 18 apply. Article 16 (3) (b) of the 1996 Order requires the Board to specify the special educational provision to be made for the purpose of meeting those needs and similarly provides for an appeal mechanism under article 18 of the said Order. I consider, however, that it is clear from article 16 (4A) of the Order that a child's parent may have made suitable arrangements so that the educational provision contained in the statement does not have to be provided by the Board. In this case there was in any event no challenge to the assessment of the child's special educational needs. The question for me is whether the alternative arrangements made by the mother are on the evidence either suitable or preferable to those proposed by the Board.

[13] The critical issue in this case is the extent to which the provision secured by the mother addresses the assessed need related to limited peer group interaction. In a review of the statement in April 2006 the mother accepted that the child had little opportunity for this other than through horse riding for the disabled. In the review in May 2007 the mother relied upon the extended family, respite care, church, horse riding, trips to the swimming pool and local shops. I accept, however, the evidence of Dr Gallagher that the placing of a child with other children does not of itself enable that child to develop socialisation skills. I consider, therefore, on the evidence before me that the regime established by the mother is unsuitable in that it fails to provide for an identified educational need.

[14] That is to be contrasted with the provision in the statement relating to those matters which should be included in the education plan. In particular the plan requires that activities designed to promote social interaction should be included. Those include the opportunity to participate in structured situations where specific skills such as sharing, turn taking, listening and attention are targeted under the supervision and guidance of qualified teaching personnel. I am satisfied, therefore, that the proposed placement in the special school would provide for this identified educational need.

[15] I accept the evidence of Dr Gallagher that is important that this child should not lose the skills that he has achieved as a result of a direction that he should henceforth attend the main special school. The evidence suggests that there are two requirements to achieve this. The child's return to the school on a full-time basis should be staggered over a short period of weeks to enable him to cope with the change. Secondly it is important that among the personnel responsible for delivering this child is provision there should be someone with some training or background in ABA techniques. I have been provided with a letter from the solicitors acting for the Board in which they indicate that they agree that a phased return should be put in place. It seems to me sensible that the school should liaise with the mother and the current

therapist with a view to managing this child's return to the school. If it is the intention of the mother to pursue part-time ABA after-school it is in my view clearly in the child's interest of the school is aware of this programme so as to ensure that this parent's wish is respected by providing appropriate support for it. I note that the Board has indicated that it would provide resources to assist the child in a phased return and it is clear that this will require specific consideration to ensure the availability of personnel with ABA training or experience to assist the child in the management of this change. I am satisfied that the child will receive the provision he requires at the special school on the basis of this commitment.

[16] Accordingly I direct that the child should henceforth attend the named special school in his statement of special educational needs subject to the process for return that I have set out at paragraph 15 above.