

LAMBETH AUTISM GROUP SUBMISSION TO SCRUTINY COMMISSION ON SPECIAL EDUCATIONAL NEEDS

The Lambeth Autism Group are a local Support Group linked to the National Autistic Society set up and run by parents, carers, family members and supporters of those who have someone close to them on the autistic spectrum. Several Committee members attended the parental consultation meetings set up by Lambeth to assist the Councillors undertake the scrutiny Commission.

This Lambeth Autism Group submission is based on a telephone survey and questionnaires circulated to members.

The Commission was set up to consider the procedures and not the way provision was provided by the individual schools. This would merit a separate enquiry since for many parents obtaining an individual educational plan (“IEP”) or indeed a statement of educational needs is only the part of the battle to secure proper provision for educational needs.

We have taken the term “statementing” to include the whole assessment procedure which may or may not in fact result in a “Statement of Special Educational Needs” being issued for a child. The title Special Educational Needs is a vast one. We consider that with the increasing number of diagnoses of autistic spectrum disorders within the UK it is imperative that Lambeth take heed and ensure that there is appropriate provision for all children on the spectrum in the future. While we are aware that it is intended to create two “units” to be attached to mainstream schools at either end of the borough this laudable start in itself is unlikely to meet existing or indeed future demand for provision which can vary greatly from child to child even with ostensibly similar diagnoses.

We would recommend that Officers and Councillors Myerson and Clarke consider the submissions made by IPSEA (the “Independent Panel for Special Education Advice”) to the Education and Skills Select Committee Inquiry into Special Education on this subject in October 2005. This can be obtained online at the website <http://www.ipsea.org.uk> where a concise history of the law of SEN and the history of the evolution of the statementing procedure is set out.

According to Section 312 of the Education Act 1996: Children have special educational needs if they have a *learning difficulty* which calls for *special educational provision* to be made for them.

Children have a *learning difficulty* if they:

- “(a) have a significantly greater difficulty in learning than the majority of children of the same age; or
- (b) have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority
- (c) are under compulsory school age and fall within the definition at (a) or (b) above or would so do if special educational provision was not made for them.

Children must not be regarded as having a learning difficulty solely because the language or form of language of their home is different from the language in which they will be taught.”

Notwithstanding this English being a second language does appear to be widely regarded as a special educational need in some areas.

Special educational provision means:

- (a) for children of two or over, educational provision which is additional to, otherwise different from, the educational provision made generally for children of their age in schools maintained by the LEA, other than special schools, in the area
- (b) for children under two, educational provision of any kind.”

At the parents consultation it was clear that the majority of parents attending the morning session had children who were on the autistic spectrum. The largest number of appeals to SENDIST (throughout the UK) are made by parents of children with a diagnosis of autism. (23.7%) yet an autism spectrum diagnosis represents only 5% of children with SEN.

The Special Educational Needs Code of Practice came into force in January 2002. This Code must be considered by LEAs when fulfilling their statutory obligations towards children with special educational needs. LEAs cannot ignore the Code of Practice. Indeed when considering an appeal the SENDIST must have regard to the Code when considering any question arising on the appeal. As such it is a “bible” for many parents. Any Commission therefore must have regard to the

guidance given by the Code of Practice. The Code of Practice is available free of charge from the DFES or on line to view <http://www.teachernet.gov.uk/doc/3724/SENCodeOfPractice.pdf>

The Code considers: the role of schools and LEA's: partnership with parents; pupil participation; assessment and intervention in each setting ie early years, primary and secondary; statutory assessment; statements of special educational needs; annual reviews and working in partnership with other agencies.

PARENT PARTNERSHIP

It is surprising therefore that Lambeth appear to disregard the Code whole heartedly with regard to the provision of a Parent Partnership Officer. The legal duty of LEAs is enshrined in Section 332A of the Education Section 1996 (Added by the 2001 Special Educational Needs and Disability Act):

“A local education authority must arrange for the parent of any child in their area with special educational needs to be provided with advice and information about matters relating to those needs. LEAs must take whatever steps they consider appropriate to make parent partnership services known to parents, head teachers, schools and others they consider appropriate.”

This is reinforced by the Code of Practice at paragraph 2:16 which states

“All LEAs must make arrangements for parent partnership services. It is essential that parents are aware of the parent partnership service so that they know where they can obtain the information and advice they need. LEAs **must** therefore inform parents, schools and others about the arrangements for the service and how they can access it. LEAs **must** also remind parents about the parent partnership service and the availability of disagreement resolution services at the time a proposed statement or amendment notice is issued (see Chapter Eight).”

When asked about their knowledge of the parent Partnership Officer members commented:

“completely useless”

“They were obstructive and unwelcoming (they had no answer to any of my queries and essentially said we must wait for a diagnosis (at that time

2 year waiting list, now 3 and for xxxx to fail 3 IEPs. They failed to offer any practical support. “

“Initially, the Parent Partnership Officer helped as much as she could. In later years we never bothered. We heard that in some instances the so-called Parent Partnership Officer would represent the LEA at SENT hearings. So much for independence and assisting families!”

Some parents had never heard of the Parent Partnership Officer. The Code does not require that the PP must be in house and indeed paragraph 2:17 states

“LEAs do not necessarily have to provide a parent partnership service themselves. They may provide an entirely LEA-based parent partnership service if they wish, or ‘buy-in’ the service from another provider, or they may choose a mix of the two. In establishing parent partnership services, LEAs are encouraged to work with voluntary groups and organisations to deliver the services which best meet the needs of parents. Where the service is provided ‘in-house’, LEAs are encouraged to nevertheless ensure they are run at arms’ length to ensure parental confidence. However the service is provided, LEAs should meet the **minimum standards** set out below.”

Paragraph 2:18: “In delivering effective parent partnership services LEAs are expected to:

- 1- take responsibility for setting and monitoring the overall standard of the service and ensure it is subject to Best Value principles
- 2- set out their funding and budgeting plans for the service (where appropriate the budget should be delegated to the parent partnership service)
- 3- ensure adequate resources and staffing to meet the needs of the parents in their area
- 4- ensure appropriate management structures for the service
- 5- ensure that the service has a development plan which sets out clear targets and is regularly reviewed; such plans should specify short, medium and long term strategies and arrangements for evaluation and quality assurance
- 6- ensure that the service is flexible and responsive to local changes
- 7- ensure that parents and schools are provided with clear information about the parent partnership service, and about the

- various other sources of support in their area, including statutory and voluntary agencies
- 8- ensure that the service is provided with accurate information on all SEN processes as set out in the Education Act 1996, relevant Regulations, the SEN Code of Practice and relevant information about the Disability Discrimination Act 1995
 - 9- ensure, where the service is provided in-house, that the staff receive appropriate initial and ongoing training and development to enable them to carry out their role effectively
 - 10- establish, where the service is outsourced either wholly or partially, a service level agreement for delivering the service which ensures sufficient levels of resources and training, and clearly set out the quality standards expected of, and the responsibilities delegated to, the provider
 - 11- irrespective of whether it is outsourced or provided in-house, appropriate arrangements for overseeing and regularly monitoring and reviewing the service, taking account of best practice both locally and nationally
 - 12- develop co-operative arrangements with the voluntary sector to ensure the mutual exchange of information and expertise
 - 13- promote and facilitate arrangements for the service to work in partnership with other agencies such as health and social services, using local planning structures such as the Education Development Plan, Early Year Development and Childcare Plan, Connexions Plan and Children's Service Plan. Provisions under the Health Act 1999 allow LEAs and health and social services to pool budgetary and management resources; such arrangements might therefore include the provision of joint information services
 - 14- actively seek feedback from the service and service users to inform and influence decisions on SEN policies, procedures and practices in order to improve communications and minimise the potential for misunderstandings and disagreements.”

According to the comments and many members experiences and indeed the views of those at the Parental Consultations it is clear that Lambeth need to address this issue as a matter of urgency. It is accepted that complying with these duties can be difficult and that the provision of PPS throughout the country varies widely. In February 2006 the DFES published its research paper on the “Evaluation of Special Educational Needs Parent Partnership Services In England.” The Report is available online [http:// www.dfes.gov.uk/research/data/uploadfiles/RR719.pdf](http://www.dfes.gov.uk/research/data/uploadfiles/RR719.pdf). The

Report confirms previous research that PPS are valued by parents and can enhance local SEN provision and services.

Given that parents considered Lambeth's PPO not to be impartial and from one of the quotes above are giving questionable advice it would appear that Lambeth must consider outsourcing its PPS. It has to be recognised that if an individual PPO is employed by the LEA in another capacity within its education department then they will find themselves frequently in a conflict situation. The Code of Practice recommends that the PPS develops co-operative arrangements with the voluntary sector and working with other agencies such as health and social services. It would seem that in other boroughs the PPS have become completely independent and taken up charitable status. LEAs with independent PPS are highlighted such as Devon, Cornwall, Torbay and Plymouth. The disadvantage of such independence was found to be lack of funding and inability of the PPS to influence LEA policy and lack of LEA commitment to the PPS.

Perhaps the way forward is for a comprehensive survey of parents of children with SEN living in Lambeth to ascertain how they would like the service to be evolved. What is clear is that schools are not currently actively promoting PPS to parents and there would appear to be little publicity of the service. Some LEAs PPS have a website and distribute leaflets. It is interesting to note that if you search on "Google" for "parent partnership service Lambeth" no website link or information about the service within Lambeth can be found merely a name and telephone number. The Council's own website does not advertise its PPS in any meaningful way meriting one line on their website with no contact information or indication of what the service offers. More worryingly when looking at the Council's SEN policy booklet, Parent Partnership is inextricably linked with "conciliation services". If the PPS has this second role then it is all the more important that it is and is seen by parents to be "impartial".

We endeavoured to contact other LEAs to ascertain how they fulfilled their statutory obligations. Wandsworth operate a PPS fully funded by the LEA but at arms length ie they are not officers within the LEA and have their own offices but are nonetheless employees of Wandsworth. The PPS consider that this is an advantage as it has enabled them to build up strong relationships with LEA officers at the same time as being viewed by parents as impartial. Additionally they offer conciliation services. They presently have the equivalent of two full time staff and 9 volunteers, the latter being provided with full training. Wandsworth PPS

indicated that they were concerned that Lambeth parents had called their service as they had not been able to contact Lambeth PPS.

Newham PPS is a charity but funded by Newham Council. They have 6 full time staff and are all effectively LEA employees. The service is nonetheless run at arms length. However due to their employment situation they are not allowed to support parents through to Tribunal and do not offer a conciliation service.

Redbridge have an independent service jointly provided by KIDS (a charity) and Redbridge Parents in Partnership.

What is clear from the DFES research paper is that to be an effective PPS parents must have access to a timely service; there is no necessity to re-invent the wheel as good practice exists elsewhere; the service must be properly publicised by Health and schools and in a number of domains; PPS should be able to offer training to voluntary groups, school staff and LEA staff; PPS should be impartial and be consulted on strategic planning.

DISPUTE RESOLUTION

Of parents who responded only one had used mediation. As stated above pursuant to Section 332B of the Education Act 1996 that the LEA must provide dispute resolution services. Most parents had no idea that mediation was an option. We understand that Lambeth is a member of the London SEN mediation group (www.londonsenmediation.org.uk). We have asked them to provide the statistics on the number of referrals made through Lambeth. It was however clear that informally they did not believe that there was much take up by Lambeth residents. It would appear that in other London boroughs it is the PPS who frequently refer parents to the mediation service. It is also left to the individual borough to publicise its service. Given that Lambeth is a subscriber then the service should be more widely advertised. We have asked London SEN Mediation to send leaflets to our group in order that the service can be better publicised among our members. We would recommend that Lambeth arrange for other voluntary groups to receive such leaflets. By improving the PPS it can therefore be anticipated that the take up of this service will increase and so hopefully reduce the number of tribunals or last minute decision reversals by Lambeth.

ASSESSMENT AND STATEMENTING

When asked to summarise how they felt about the process of statementing parents commented:

“Complete nightmare”

“Absolute shambolic nightmare characterised by the LEA’s obstruction, intimidation, aggression, disorganisation, misinformation and above all a fundamental failure to observe the DFES Code of Practice. It became quickly clear that Lambeth’s overriding concern was to save money at whatever cost, whenever there was a viable opportunity. “

“dreadful”

“Tortuous and adversarial until it came to secondary transfer where they did not tinker with the statement and named the school we wanted on the statement. We would not wish to go through what we had endured previously.”

How can Lambeth improve this service:

“Better communication between all parties. Efficient,, sympathetic and knowledgeable staff”

“Greater LEA accountability (eg, how many cases against Lambeth LEA over a given period are taken to tribunal and won?), and greater LEA transparency in their decision-making process.”

“Stop their blanket policy of refusing to statement children as a means of saving themselves money.”

“Stop putting money before children. Be honest not evasive. The “Panel” system needs complete revision. ”

Further Comments by parents:

“When draft statements are issued they continue to be unspecified and unquantified. It is only those parents who are able to challenge draft statements that obtain adequate provision for their SEN children. Above all else, Lambeth LEA is failing the most vulnerable”

“We were lucky enough to have the means and the energy to take them to tribunal but many families are unable to and get left with the inadequate provision provided by the LEA. With the right education early on many of these children will eventually be able to lead semi independent lives and save the state many thousands in life long care but the LEAs and the government never look at the long term. It also seems completely immoral not to provide the most vulnerable children with the best we can give them. “

“We spent years fighting for xxxx’s entitlement to an education... We compiled .. pages of evidence for the SENT including.. reports by Lambeth’s own professionals. These were ignored on no less than 4 occasions by the Panel. This group of faceless, nameless “experts”.... Every report supported one another: yet Lambeth still ignored the evidence However, the stress has been immense...it shouldn’t be like this!

The majority of the parents had instigated the statementing process themselves and often without school support. It is of great concern that parents made comments about the refusal to assess being told :

“too young” yet under Section 331 of the Education Act 1996 the Lea must make an Assessment if the parents request it even if the child is under two. The normal timetable does not apply but the parent can appeal to SENDIST. It is accepted that assessments under two will be rare but in complex cases may be necessary. Once the child is over two and under school age then the normal rules apply and a strict timetable must be adhered to. The DFES produces a very helpful leaflet on the subject of early assessment entitled “Early Support- Statutory Assessment”.(ref ESPP26)

The leaflet can be seen online at

http://www.earlysupport.org.uk/DocumentLibrary/tabid/109/DMXModule/419/EntryId/82/Command/Core_Download/Default.aspx”

Accordingly staff at Lambeth must need better training and nurseries and parents should be provided with copies of this leaflet or alternatives. Improved communication between Health and Education would also ensure that parents have access to correct information.

“insufficient evidence” (in a case where the Tribunal ordered assessment as the evidence was “overwhelming”)

This is a whole topic of its own. Currently within Lambeth the NHS assessment for autism is a three year wait. While it is accepted that this is not of the LEAs creation it would seem that the LEA are sometimes taking advantage of this to turn down assessments – no diagnosis therefore no statutory assessment. It is heartbreaking for parents who know that their child requires help to be faced with such a struggle. It cannot be in the interests of society in the long term. If “every child matters” then these children must not be forgotten. Even with a diagnosis the LEA may simply ignore this perpetuating the impression that provision delayed is budgetary provision saved

TRIBUNALS

According to the SENDIST’s own data Lambeth is the most appealed LEA in the country if the figures are analysed as number of appeals per 10,000 school population. Since 2001 the number of appeals registered at SENDIST per 10,000 school population has never dropped below 20. Only in 2004-2005 was Lambeth beaten in these figures by Lewisham who scored 21.76 against Lambeth’s 20.38. These figures support the views of those parents at the parent consultation. Nearly all who attended at least one of the meetings had registered an appeal with SENDIST. Of those who responded to our questionnaire at least 50% had registered an appeal with SENDIST or been to Tribunal. The Commission must therefore look at the number of parents who have to lodge an appeal and why. We have asked the SENDIST to provide the statistics for Lambeth and are awaiting a full response.

ASSESSMENT CRITERIA

On 15th November 2005 Ian Coates, Head of Special Educational Needs and Disability Division at the DfES wrote to all Chief Education Officers and Directors of Children's Services about “blanket policies” in relation to statutory assessments and specifying and quantifying provision in children's statements, naming schools in statements, and amending statements of children transferring between phases of schooling explaining the statutory position as seen by the Department.

That letter contained a reminder about *R (on the application of IPSEA Ltd) v The Secretary of State for Education and Skills* (supra) The letter stated that any local authority policy which prohibits, deters or even discourages its officers from specifying educational provision clearly and

in detail and/or from quantifying educational provision for particular groups of children is likely to result in breaches of:-

1. section 324(2) and (3) of the Education Act 1996, which provide that the statement must contain such information as may be prescribed and must specify the educational provision to be made for the purpose of meeting the needs identified in the statement;
- regulation 16(b) of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, which provides that the statement must contain the information specified in Schedule 2 to those Regulations, which requires educational provision to be specified in terms of "any appropriate facilities, equipment, staffing arrangements and curriculum..."; and
- section 313(2) of the Act, which imposes a duty on LEAs to have regard to the provisions of the Special Educational Needs Code of Practice (2001), paragraphs 8.36 and 8.37 of which make clear that statements should specify the special educational provision necessary to meet the needs of the child, detail appropriate provision to meet each identified need and normally quantify the provision.

There was reference to particular paragraphs 14, 15 and 17 of the judgment in which Lady Justice Hale noted that:

"...the statement clearly has to spell out the provision appropriate to meet the particular needs of, and objectives identified for, the individual child" (paragraph 14); and

"..., any flexibility built into the statement must be there to meet the needs of the child and not the needs of the system." (paragraph 15)

The letter contained the Department's view that "It remains the case that vague statements, which do not specify provision appropriate to the identified special needs of the child, will not comply with the law." (paragraph 17)

Members of the Lambeth NAS are aware of statements and proposed amended statements since that date which contain inadequate specification of provision in Part 3. In one case a parent was informed that it was "up to the school" to determine provision, which reflects precisely the unlawful approach under consideration and supports the view that this is a continuing policy, written or otherwise.

Mr Coates' letter also referred to the requirements when naming a school in Part 4: Where a local authority, having made a first statutory

assessment of a child or at the time of amending a statement, sends a copy of a proposed statement or a proposed amended statement or a copy of the existing statement and an amendment notice to the parent, the written notice which must accompany these documents must contain the information as specified in Schedule 1 to the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, by virtue of regulations 14 and 15 respectively of those Regulations (a copy of which is to be found in the back of the SEN Code of Practice 2001). This information must include a list of all primary or secondary schools, as appropriate. This list should include all maintained schools (including special schools) within the area and all non-maintained special schools approved by the Secretary of State under section 342 of the Education Act 1996 and all independent schools approved by the Secretary of State under section 347 of the Act.

Members of the Lambeth NAS have received statements and proposed amended statement which contain none of these documents and appendices. Whilst in some cases parents may have access to these by other means the law is being flouted. LEAs were reminded that when making consultations the Authority must send a copy of the proposed statement, amended statement, or existing statement and an amendment notice and in all cases the appendices to the statement must be included. A SENCO informed a Lambeth NAS member that they routinely see statements without appendices: this may create a false impression of the needs of the child and an opinion favourable to the LEA about the consulted school's ability to meet unspecified needs, which the LEA may then seek to rely on.

PARENTAL INPUT

The Code of Practice affirms: "Partnership with parents plays a key role in promoting a culture of co-operation between parents, schools, LEAs and others ... All parents of children with special educational needs should be treated as partners." (paragraphs 2.1/2.2) However, the Code also makes clear that the role envisaged for parents in this 'partnership' is to act as 'informant': "Parents hold key information ... They have unique strengths, knowledge and experience to contribute to the shared view of a child's needs and the best ways of supporting them."

Many parents clearly do not consider that they are properly involved in the current process. Others will have difficulty being involved due to language differences or their own disabilities. It is feared that the LEA will take advantage of these parents to the detriment of those children.

What is clear is that to evolve a fully inclusive education system Lambeth must take on board the criticisms of parents: working together we can all have a positive impact on the future of children with special educational needs.