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How Independent are the Independent Special Needs Tribunals?

Abstract :

This paper provides an insight into the composition and the decision making process of the Special Needs Tribunals. It also raises important questions about the energy parents have invested in the “independence” of this body and whether such a confidence is well placed.

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How Independent are the Independent Special Needs Tribunals?

Introduction

As teachers working in "special education" we have been concerned for some time that children with "statements of special educational needs" continue to be denied the same rights as their non-disabled peers. It is our experience that increasing numbers of parents and professionals are questioning the practice of existing legislation which can result in the forcible removal of a disabled child from their local mainstream school or preventing their attendance, leading to segregation into special schools.

The meaning of "special educational needs" is formally recognised in those learners who have "learning difficulties", which, in turn, calls for special educational provision to be made. The meaning of "learning difficulty" includes the following:

An individual who has a significantly greater difficulty in learning than the majority of learners of the same age.

OR

A learner who has a disability which either prevents or hinders the individual from making use of the educational facilities of a kind generally provided for learners of similar age in schools within the area of the local education authority. ⁽¹⁾

Such official meanings were created with the 1981 Education Act and restated in the 1993 Education Act. This legislation implies that the "difficulty" in meeting individual educational needs is located within the individual's impairment, rather than the Local Educational Authority's (LEAs) failure to support the diversity of individual abilities in ordinary schools.

The assessment, or "statementing" process⁽²⁾ to which many disabled children are subjected, is underpinned by such official meanings of special educational needs. The process reinforces a fundamentally flawed view of the learner as being somehow "deficient" and in need of "experts" to "fix" them. Subsequently, such a process becomes a regular and often intrusive feature in the lives of disabled people. Richard Rieser, educationist and activist in the politics of disability, argues that this "medical model" of disability leads to assessments which restrict opportunities available to disabled people:

"other people's assessments of us (usually by non-disabled professionals) are used to determine where we go to

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school; what support we get and what type of education; where we live; whether or not we can work; and of what type of work we can do; and indeed if we are even born at all or are even allowed to procreate" ⁽³⁾

The medical model of disability compounds a negative view held by the schooling system and serves to perpetuate the unfair discrimination of disabled people.

To change such negative views, existing educational legislation, relating to disabled children has to be changed. A first step is to ensure disabled children and their families have the same rights as their non-disabled peers; to state a preference to attend their local mainstream school with their friends, brothers and sisters. In addition they should have, as a right, an expectation that appropriate supports will be made available to ensure access to a broad and balanced curriculum. Such a preference should not be subject to the now infamous "get out clauses" of existing legislation.⁽⁴⁾

- 1. The pupil being integrated should receive the necessary special educational provision.**
- 2. The pupil being integrated should not affect the efficient education of other children within the school.**
- 3. The pupil's integration should be within the efficient use of resources.**

These clauses have been subject to wide interpretation by different Local Education Authorities and have been used very effectively to deny many disabled children a place in their local mainstream school.

Before 1993, parents who sought to question and subsequently appeal against LEA interpretations had recourse to a Local Authority Panel, comprising of elected local representatives. It was generally recognised that such appeal procedures were lengthy and bureaucratic often creating "log jams" which left families feeling distressed and frustrated. Dissatisfaction with the decisions of this Panel could lead to an appeal to The Secretary of State for Education. (Now Department for Employment and Education)

It was partly as a response to these concerns that changes were included in new legislation, i.e. the 1993 Codes of Practice which came into operation in September 1994. The new Independent Special Educational Needs Tribunal was formed to replace the earlier two tier appeals system.

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There was a general expectation that the new Independent Tribunal would be much **fairer, quicker, less formal** and encourage a **less adversarial** stance between the LEA and parents.

During the passage of the 1993 Code of Practice, which introduced the new Tribunals system, Phillipa Russell, Director of the Council for Disabled Children, suggested some caution relating to The Special Educational Needs Tribunals.

"The advent of an independent appeal system has been widely welcomed, but the process of going to appeal will always be traumatic; may contribute to adversarial relationships between those who challenge and those who defend;..." (5)

Russell⁽⁶⁾ also made reference to an American survey of parents with children labelled as having special educational needs who used the USA public hearings. Russell referred to the findings which stated that significant numbers of parents felt that the procedures were "very negative". Russell highlighted the importance of an effective and fair appeals procedure :

"The moral for the U.K..... is that we need much greater honesty and respect between parents, professionals and the LEA...." (7)

Rieser argued that the new legislation still did not include the same rights for disabled children as their non-disabled peers⁽⁸⁾. Therefore, there should, at the very least be an expectation on the SEN Tribunals to demonstrate fairness in their adjudication over disputes between parents and LEA's.

**COMMENT:
The Independent SEN Tribunals must not only be independent of the LEA, but must be seen to be independent.**

Given that the new 1994 legislation fails to give children the same rights as their non-disabled peers, there will inevitably be increased disputes between parents who want mainstream education, with appropriate support, for their children and LEA's who are able to continue to press their interpretation of the existing "get out clauses", thus preventing a disabled child from attending their local mainstream school. In such disputes it is crucial to have a process which is acknowledged by parents to be fair and not simply another extension of the LEA bureaucracy. Therefore important questions have to be asked about the constitution of the new Independent SEN Tribunals, their role and to whom they are accountable. Under the auspices of Bolton Institute, School of Education and

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Health Studies we conducted an investigation into the Independent SEN Tribunals between May and June 1995. We sought answers to the following questions:

- 1. Who appointed the Independent SEN Tribunal members ?**
- 2. Who are the Independent SEN Tribunal members ?**
- 3. What are the procedures used by the Independent SEN Tribunals**
- 4. What costs are required for the Independent SEN Tribunals ?**
- 5. What decisions have the Independent SEN Tribunals made in their first six months ?**
- 6. What do Independent SEN Tribunal members say about the future of Special schools and children's impairments ?**
- 7. To whom are the Independent SEN Tribunals accountable ?**

1. Who appointed the Independent SEN Tribunals members?

Source: DFEE V.K. PHILLIPS Pupils and Parents Branch 23 June 1994.

The Special Educational Needs Tribunals Office was established by the Department for Education in 1994 with the responsibility for appointing the members to the SEN Tribunals. Each Tribunal consists of two lay members and a Chairperson (Chairpersons, are people with legal qualifications and experience; these appointments are the responsibility of the Lord Chancellors Office)

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The Independent SEN Tribunal Office convened an interviewing panel who interviewed prospective Lay members. This panel includes:

Mr Trevor Aldridge Tribunal President
Mr Peter Cates Retired Chief Education Officer, Shropshire
Professor Ron Davie..... National Association of Special Educational Needs.
Mr John Fish..... Retired HM Inspector
Ms Moyna Gilbertson Former Director, Association for Spina Bifida and Hydrocephalus, and retired Physiotherapist.
Mr Freddie Green. Retired HM Inspector
Mr Colin Low Former Director, Disability Resource Team GLC,
Mrs Jean McGinty Retired HM Inspector
Mr Brian Norbury Retired Senior Civil Servant
Mr Jonathan Phillips Former National Association for Deaf Children, now Social Services Inspectorate
Mr Ivor Slocombe Retired Chief Education Officer, Wiltshire.

The shortlisting of the applications for Lay members of the SEN Tribunals was completed by the President, Mr Trevor Aldridge, with advice from the DFEE. The brief to members of the interviewing panel suggested the following criteria for appointment:

That lay members should have:

- ◆ **Knowledge and experience of either local government or special educational needs.**

and that there should be:

- ◆ **a "spread" of candidates from Age, Gender and Ethnicity.**

COMMENT:

We have no information on the criteria for the selection of the Chairpersons.

2. Who are the Independent SEN Tribunal Members ?

Source: DFEE V.K. Phillips. 23rd June 1994

The Chairperson is responsible for structuring the hearing and adhering to the law as laid down in the 1993 Education Act. The Lay Members are appointed for their knowledge or experience "in local government or special educational needs at a strategic or operational level"

We received a list of all the Independent SEN Tribunal members, both lay and chairpersons, from the SEN Tribunal Office. (See Appendix 1).

How Independent are the Independent Special Needs Tribunals?

2.1 Location and Gender of SEN Tribunal Members in England & Wales.

There are 120 members in total. The majority of Tribunal members are located in the South of England. 62 of the 120 (51.7%), 24 (20%) are from the North and 24 (20%) from the Midlands, 10 (8.3%) members live in Wales.

2.2 Gender

Of the 120 Tribunal members 48 are Women (40%) and 72 are Men (60%). Of the 32 Chairpersons 12 are Women (37.5%) and 20 are Men (62.5%) of the 88 Lay Members 36 are Women (40.9%) and 52 are Men (59.1%).

2.3 Questionnaire

A questionnaire was distributed via the Independent SEN Tribunal Office to all the 120 Tribunal members, we received 70 responses (58.3%). 14 Chairpersons of a possible 32 (43.75%) and 56 Lay members of a possible 88 (63.6%).

5 of the 70 (7.1%) respondents are disabled people and 6 of the 70 (8.6%) have a son or daughter who has a Statement of Special Educational Needs.

Information from respondents to questionnaire:

	Chairpersons	Lay Members
Response	43.75%	63.6%
Gender		
Women	37.5%	40.9%
Men	62.5%	59.1%
*Disabled Respondents.	7.1%	7.1%
*Parents of Disabled Children.	7.1%	8.9%

COMMENT:

Given the significant, and often unique, contributions, in terms of experience and an alternative perspective, such people could make to the SEN Tribunal hearings it is surprising that so few disabled people and parents of children who had been through the Statementing process were appointed. It would appear that no expectation of significant representation from such individuals was required. The number of actual appointments, of disabled people to the panels, (7.1 % and 8.6 % of parents with children who had special educational needs) is a reflection of such an omission, and perhaps a reflection of the values of the "service"

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2.4 Employment of SEN Tribunal Members

In terms of employment, all the SEN Tribunal members who responded have worked or are working in 'professional' occupations. A legal qualification is necessary in order to be a Chairperson of the SEN Tribunal. 11 of the 14 Chairpersons are employed in the Legal profession, 9 as solicitors and 2 as barristers.

All but 7 of the Lay members who responded have at one time been employed within the Education Service:

- 11 Directors or Assistant Directors of Education, or Heads of Services,
- 13 Consultants or Advisors,
- 11 Education Officers,
- 10 Educational Psychologists,
- 10 Teachers,
- 6 Inspectors and
- 4 working within Higher Education.

45 of the 70 (64.3%) respondents have been employed in 'Special Education' prior to their appointment as SEN Tribunal members.

2.5 How did the respondents hear of the SEN Tribunals ?

- 20 Respondents were informed about SEN Tribunal membership via Governmental Departments,
- 15 Were recommended by a colleague or friend,
- 15 Were informed or nominated by their Professional Association or Organisation
- 14 Via the National Advertisements.

The information provided by the respondents to the questionnaire suggests that:

- The majority of Tribunal members are men.
- The majority are located in the South of England.
- The vast majority are non-disabled
- The majority are from 'special education professions'
- The majority were informed about membership to the SEN Tribunals via their employment connections.

COMMENT:

It is assumed that from whatever source the candidate had been informed of SEN Tribunal membership, this would be followed by the usual process of application

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After completion of the written questionnaires we followed up with face to face private interviews which lasted approximately one and a half to two hours. The following descriptions of the procedure of the hearing was compiled from interviews with two lay members and a Chairperson. These individuals made it clear they were speaking personally and not as representatives of the Tribunal membership as a whole.

3. What are the procedures used by the Independent SEN Tribunals?

The Chairperson is legally qualified and has the responsibility of directing the hearing. Whilst the Chairperson has guidelines for the procedures to be followed, there exists an opportunity for individual interpretation. The expected setting for the hearing is one of "informality" and "openness" within a clear structure. The setting is often in a local hotel to demonstrate independence from "official" buildings.

3.1 Prior to the hearing:

- SEN Tribunal members are contacted by the Tribunal Office to check their availability for a particular hearing.
- Information and papers relating to the hearing are sent two weeks in advance of the hearing.
- The Chairperson is informed of the lay members who will be in attendance at the hearing.

3.2 Immediately before the SEN Tribunal starts:

- The Chairperson and the two lay members meet approx. 45 minutes prior to the hearing to discuss the content of the papers.
- Discussions involve identifying the key issues and areas of agreement and contention.
- The hearing focuses on 2 or 3 broad questions concerning dispute.

3.3 LEA representatives and parents enter the room.

- The Chairperson will introduce her/himself and invite all other parties to do the same. Disclosure of information relating to professional status or experience of the SEN Tribunal members is at the discretion of the individual.
- The Chairperson will repeat the call for informality.
- The Chairperson will state the purpose of the hearing and that it represents the final stage for people to clarify and enlarge on the issues before them and, if necessary, to ask questions of the other side and to raise additional points not included on the papers. There is also the opportunity for Tribunal members to ask questions.

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- The Chairperson asks the LEA to present their case on the first issue of contention and to call any witnesses. The Chairperson does not let people interrupt or talk to each other.
- Parents then follow a similar procedure and are given the chance to present their arguments, they can ask questions of the LEA. There is a degree of flexibility in the order of presentation, i.e. parents can explain their case, call witnesses or ask questions. This is an attempt to create a more informal procedure.
- Then the LEA can ask questions of the parents.
- Lay members of the panel ask questions when the parties have finished. The Chairperson can ask questions during the presentation, if appropriate.
- The same procedure is followed for each point of contention.
- The SEN Tribunal has to be informed of the witnesses beforehand and only a limited number are allowed to attend. They do, however, remain throughout the hearing.
- Then there is an opportunity for people to say anything that they wanted to but did not get a chance.
- Then the Chairperson states the target of signing the decision in 10 working days. The whole proceedings are taped.

During an interview one lay member explained that whilst a similar procedure was followed by the four Chairpersons on panels they had served, there was a significant variation in their competence, the lay member said:

"Chairs tend to have different approaches, they are different in terms of their reactions and have variable skills in terms of managing a meeting. Some ramble and find it difficult to focus, it depends on the quality of the chair"

3.4 The decision

- After a short break of 15 minutes the panel of three will reconvene.
- The discussions involved in making decisions are not taped because it would hamper "free, open and independent discussion".
- Lay members are given the opportunity to offer their observations and comments to the chairperson. They are asked to address the key issues as highlighted from the initial

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discussions. The Lay members are acknowledged to be the "experts" and the Chairperson may well defer to such expert knowledge unless there is a legal point of order regarding the process.

- There is a general expectation that the child's interest will remain paramount.
- The decision is drafted by all 3 members then agreed, dictated and given to the Clerk on the day to be sent to SEN Tribunal Office for typing. The President will re-write the decision for the parents in a "friendly accessible" way within 10 working days.

The SEN Tribunals have attempted to maintain a degree of consistency in their decisions. However the President, Mr Trevor Aldridge, stated⁽⁹⁾ that the decision at one particular hearing is final and not binding on others. The SEN Tribunal Secretary, Jessica Saraga, confirmed this in a recent report in the Times Educational Supplement:

"the concerns (about decisions taken by the Tribunal) were largely technical as parents can only appeal to the High Court on points of law." She continued "the decisions of the Tribunal, which costs nothing to attend, should be regarded as final." ⁽¹⁰⁾

Once the decision has been given by the SEN Tribunal, there is no appeal other than a challenge on a "point of law". One such challenge against a Tribunal decision was heard in the High Court in August 1995.

COMMENT:

The judgement as reported in the TES⁽¹¹⁾ is acknowledged as a significant disadvantage to parents wishing to challenge the judgements of the new Special Needs Tribunals. The decision cannot be challenged by children in their own right, therefore it is the parents who would have to seek legal redress in the courts. Since many parents would not be entitled to Legal Aid, the costs would be prohibitive to many and, therefore, this particular avenue will be closed. John Wright of IPSEA (Independent Panel of Special Education Advisors) believes that "the routes to challenge the legal system have been closed down enormously". ⁽¹²⁾

3.5 Independence

The experience to date suggests the SEN Tribunal members are keen to be as independent as possible. A comment made by one Chairperson:

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"Independence can mean objective ignorance especially if it is a matter of deciding for example if somebody did a crime or not. Independence to me means unbiased and having no vested interest in the outcome of a case. To do a child justice you need expertise when dealing with complex issues therefore you need experience in the field"

The Chairperson also expressed a genuine concern that parents were heard and the proceedings were conducted in such a way that the language used throughout was accessible and any jargon was not used to intimidate.

Equally, lay members also stressed the importance of their independence in arriving at a fair decision at the Tribunal. It was suggested that because many of the lay members were aware of the workings of local government and special education provision, they are able to ask far more searching and pertinent questions of the LEA. Their comments included:

"The SEN Tribunal is a far better system than the old appeals system, they are able to ask far more penetrating questions than before."

"There is a very genuine attempt by all the Tribunals I have been involved with to be as fair and as open as possible to the children and the parents".

COMMENT:

The SEN Tribunals are faced with an important and potentially damaging dilemma.

On the one hand they are comprised of people with an "expert knowledge" of the workings of the educational system in general and the special education system in particular. This means the members have the potential to ask far more competent and penetrating questions of LEA officials who, in the past it could have been argued, were able to mask significant issues beneficial to the parents case from elected representatives through the use of jargon.

On the other hand the "lay members" may well be lulled into an acceptance of a conventional orthodoxy, or a particular professional code of practice, from which they themselves have emerged, working from within a particular paradigm which brought the parents into conflict with the LEA in the first instance. The existing composition of the SEN Tribunals may well result in a public perception which rejects the "independence" of the SEN Tribunals because it will be seen that the people

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sitting in judgement of the parents are the same people from the LEA perpetuating a "them and us" adversarial position. Simply to call yourself "independent" or "objective" is not acceptable, particularly if it is perceived that the group calling themselves "independent" are seen to be repeating a set of values which already exist in the County Hall.

4. What costs are required for the Independent SEN Tribunals ?

Source: DFE Miller, B. Pupils and Parents Branch. 8th June 1995

The SEN Tribunals are an "independent body" funded totally by the DFE.

In 1994/5 The SEN Tribunals had a total budget of £770,000, £550,000 for "running costs" and £220,000 for "programme costs".

The cost of individual tribunal hearings can vary widely, depending on the location of hearings. Factors such as, hire of accommodation and the travel costs for witnesses, Tribunal members, the Tribunal Clerk and parents, influence the final cost for each hearing.

Payments to members of the Tribunals:

Lay members are paid £119 per day, plus expenses.

Chairpersons are paid £233 per day plus expenses.

The anticipated budget for 1995/6 is in the region of £950,000.

COMMENT:

Some SEN Tribunal members highlighted a concern about inadequate resources to meet the enormous demands made by too few staff at the Tribunals Office.

SEN members suggested:

- **"the tribunals are not efficient, they are underfunded";**
- **"the SEN process is not efficient due to the amount of long distance telephone calls chasing people for availability. Tribunal members are sent enormous distances and, therefore, have to be put up in hotels overnight; this would be unnecessary if they used local people."**

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5. What decisions have The Independent SEN Tribunals made in their first six months?

	Total	1994	1995
Number of Appeals	559	70	389
Outstanding Cases	423	54	369
Hearings	78	75	3

- 50 decisions have been issued to parents;
- 50% of appeals have been dismissed outright;
- 60 - 70 appeals are pending registration;
- the average number of appeals received per week is 30;
- the average time taken to get to hearing is 4 months.

5.1 The type of appeal

The Type of Appeal	%
Against refusal to assess	20
Against refusal to make a statement	29
Against contents of statement	25
Against refusal to re-asses	1
Against refusal to change name of school	1
Against decision to cease to maintain statement	5
Against school named in statement	18
Against failure to name a school in statement	1

COMMENT:

The figures would seem to suggest that with the advent of the new SEN Tribunals came a high expectation that disputes would be resolved more speedily than the old appeals system. Although it is very early to make a judgement about the length of time a family will have to wait for a hearing, in the first six months of the SEN Tribunals, only 78 of the 559 have had a hearing.

5.2 Categorisation

*Source and Language used from: SEN Tribunals Statistics, Tribunal Office 1.5.95

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The statistics from the SEN Tribunal office also includes the categorisation of the individuals concerned in terms of their particular impairments.

"Spread of Disability"	%
EBD (Emotionally and Behavioural Disturbed)	7
Epilepsy	.5
Hearing Impairment	3
Moderate Learning Difficulties	7
Physical Handicap	3
Severe Learning Difficulties	7
Visual Impairment	.5
Other	13
Autism	1
Specific Learning Difficulties	51
Speech and Language	7

Comment:

It is disturbing to note the language of categorisation used in the SEN Tribunal statistics, a concern highlighted by Boot T. and Vincent C.⁽¹³⁾. The 1993 legislation has failed to rid us of the confusion and inadequacy of the categorisation in the 1981 Education Act. The statistics indicate a continued usage of out dated terminology. The language of the SEN Tribunal statistics reinforces a "medical model" of impairment, the consequence of which have been highlighted by Rieser ⁽¹⁴⁾. It suggests that children with Down's Syndrome are "suffering" and "handicapped". Again, the implication being that "suffering" results from an individual's impairment rather than inappropriate support or lack of resources from the Local Education Authority. The use of the term "handicap" and a failure to recognise "handicap" as the social construction⁽¹⁵⁾ of barriers around disabled people, is a significant indicator of their failure to involve disabled people in their deliberations.

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6. What do independent SEN Tribunal members say about the future of special schools and children's impairments?

Members of the Independent SEN Tribunal (both lay and Chairpersons) were asked to state whether they agreed or disagreed with two statements relating to:

- The Future of Separate Special Schools.
- The child's impairment.

Statement 1

"There will be a need for separate special schools for the foreseeable future"

Agree	91.4%
Disagree	2.9%
No Comment	5.7%

Comment from one respondent who disagreed with this statement:

" I can foresee special schools becoming an integral part of the mainstream educational system".

Comments from respondents who agreed with this statement included:

"Special schools will always be required for a "small minority of children."

"Special schools with a favourable pupil/teacher ration with specialist staff, may be in the best interests of some children with SEN"

"There needs to be as much parental choice for children with special needs as for other parents."

"Adequate provision is not presently being made in most mainstream schools.... cannot envisage resources being made available to support all young people"

"Resources - also as classes become larger in ordinary schools SEN pupils will fall further behind. Testing and publishing results will work against S.E.N pupils"

"Disagree in principle but agree in practice.

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"While the U.K. needs to move towards inclusive education currently the National Curriculum and the Law will make progress difficult"

"Gradually diminishing need"

"Not all children's needs will be met in mainstream schools."

"This is too simplistic a statement. I believe in the philosophy of integration and that we do not therefore "need" special schools. However there are significant resource implications which need resolving before one can close all special schools and there are some gaps e.g. PMLD children with very specialist needs"

Statement 2

"It is possible for a child irrespective of nature or severity of impairment, to participate in a mainstream school given the appropriate support

Agree	34.3%
Disagree	54.3%
No Comment	11.4%

Comments offered from respondents who agreed with statement included:

"I agree more than disagree but I have reservations about costs necessary to make mainstream accessible "

"Agreement on philosophical rather than practical grounds"

"Agree- subject to proper resources - and parental choice"

"In principle I agree. But this does not always work due to cost/access"

"The emphasis must be on appropriate support"

"Statement true by definition - appropriate support unlikely to be generally realisable in some cases"

"Subject to proper resources - and parental choice"

Comments from respondents who Disagree with this statement included:

"..... the 'appropriate support' may be so great that it interferes with the full and efficient teaching of other pupils. That will also mean it is exceedingly expensive and

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the parents of mainstream pupils might resent what they perceive to be disproportionate amount of money being spent on one child. there are more issues to consider than just integration"

"This statement is too conclusive. Not EVERY child could."

"unfortunate, but schools generally under too much pressure from recent legislation to fully meet the needs of all pupils."

"Possible in an ideal world with unlimited educational resources and family support resources"

"It is not to all children's educational advantage to be educated in mainstream. 'Participation' does not automatically mean that a child's educational needs are being met."

"If one does not try to include some medical/emotional needs. I visited Canada and have seen inclusion in Ontario, New Brunswick, Edmonton and found it was not a model that would sit in GB In any event 'medically fragile' and EBD were in separate establishments"

"The severity of the impairment must certainly dictate the type of environment best suited to the individual."

Comment:

It is alarming for those people who advocate a vision of inclusive education that almost ALL the respondents thought special schools would exist for the foreseeable future and that over half the respondents indicated that despite appropriate support the child's impairment would prevent their participation in mainstream school.

Such views were reflected in two of the SEN Tribunals judgements where parents wanted mainstream places for their children:

Judgement 95/4

***Source for both judgements, Special Education Needs Tribunal: Digest of Decisions. May 1995, pp 1-2**

"The Tribunal considered that were X to attend a mainstream secondary school he would not take part in appropriate learning experiences for most of the time. On the other hand, they accepted that the specialist teaching in the smaller, controlled environment of the special school

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would be more suitable to his ability, aptitude and special needs.” They also decided that a placement in the special school would be more efficient use of resources. The appeal was dismissed.

Judgement 95/5

" X suffered from Down's Syndrome and had severe, learning difficulties..... The parents suggested that the LEA followed a policy of excluding Down's syndrome children from mainstream schools, which improperly fettered their discretion. The evidence, however, was that they had explored several options. The tribunal accepted that the necessary arrangements were not to be made in the local mainstream school, and rejected the appeal."

Comment:

The comments from SEN Tribunal members who responded to the questionnaire raises serious questions about the dominant professional non-disabled persons view⁽¹⁶⁾ in relation to the continued existence of segregated special schools and the focus on impairment as being the significant barrier to participation in mainstream schools. Several years ago the dominant view of apartheid by many white people in South Africa was that it was positive!

Had there been significant representation from disabled people who had experienced “Special Education” or from parents of disabled children who are, perhaps, more able to appreciate the abilities of their children, the views held by SEN Tribunal members could well have been challenged and the decisions made at hearings may have resulted in different outcomes.

7. To whom are the Independent SEN Tribunals accountable?

When we first contacted the Department for Education (now DFEE) about the Tribunal Members, we were directed to The Special Educational Needs Tribunal office which had been established to administer their operation. We made a formal request to the tribunals office for the names and a contact address for each tribunal member. We were sent a list of all members and the town/county of their residence. We were told by the tribunal office "it would not be appropriate for us to release members addresses as this is personal and confidential information"

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When we suggested that these people were appointed as arbiters in important educational decisions the statement regarding their confidentiality was repeated and later confirmed by the DFE.

After some negotiation we settled on a compromise in order that we could distribute our questionnaire. The Tribunal office would distribute our questionnaire in sealed envelopes to all tribunal members. This was still a cause for concern for us because such correspondent would be seen as coming from the tribunal office and may well have influenced members completion of the questionnaire.

After the survey had been completed with a return of 68% we discovered that an "internal memorandum" had been circulated to all tribunal members, sent out by the tribunal secretary, Ms Jessica Saraga "informing" the members that they should "take care" in completing certain questions because their comments may be used in the press.

It was unfortunate that we were not able to print the memorandum verbatim but the SEN Tribunal Office refused to release it.

Our concern in conducting such a survey was that members of the SEN Tribunal should be accessible. A contact address did not necessarily imply a home address but an address where they could be contacted other than via the SEN Tribunal Office. The memorandum from the SEN Tribunal Office would appear to have some influence in our attempt to interview individual members. In our questionnaire we asked each member if they would be prepared to participate in follow up face to face interviews. Over 40% of the 68% return agreed to such an interview. However, after the memorandum had been sent we made telephone calls to a sample who had been selected for interview. A significant number were reluctant to offer any further information. One member said that "since they had completed the questionnaire they had received a memorandum from the tribunal office and therefore they felt "unable to offer any further assistance". We were, however, able to speak at length to a small sample of tribunal members and to them we offer our thanks.

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Conclusions

The introduction of the new SEN Tribunal was greeted by many as an opportunity to create a **fairer, quicker, less formal and less adversarial** system of appeal for parents compelled to challenge the decisions made in respect of their child by the LEAs.

The information gathered from the SEN Tribunal Office and the panel membership who responded to our survey would indicate that some of the efficiency anticipated in bringing an individual case to hearing may well have been achieved. However, the composition of the SEN Tribunal membership and their lack of accountability indicates serious concerns about their claim to independence.

Few parents welcome the prospect of challenging the decisions taken by an LEA. It is also likely that before parents take the difficult decision to appeal to another body they will have had many months and, for some families, years of struggle with their LEAs, creating a sense of distrust of professional bodies.

A sense of distrust can only be compounded when parents are presented by a Tribunal consisting of professionals, the vast majority of which have been educated, trained and socialised by the very systems which the parents are seeking to challenge.

The SEN Tribunal membership who responded to our survey consisted of lay members primarily from “Special Education” or “LEAs” with only a few disabled professionals and members who were parents of disabled children. Given the “disability issues” to be addressed by the Tribunals it will not be surprising if the SEN Tribunal comes to be seen simply as an extension to the LEA bureaucracy.

The SEN Tribunal system lacks what we would call the “scrutiny of ordinariness”. Whilst there were many faults within the previous two tier appeal system, it did comprise of members who were elected, and who were publicly accountable, from a wider spectrum of the local community. No matter how user friendly, no matter how informal, no matter how independent SEN Tribunals purport to be, to families struggling to have the right for their child simply to belong, they hold the potential for further rejection. Such a power of rejection must be open to wider scrutiny.

How Independent are the Independent Special Needs Tribunals?

Parents of disabled children, who want their child to attend a mainstream school, already have to struggle to get appropriate resources to support their child. However, if we give the disabled child the same right as her or his peers to attend their local mainstream school we will remove the need for many parents to go to the SEN Tribunal.

The SEN Tribunals follow a set of guidelines in their procedures. However, such procedures are open to a significant degree of interpretation in the selection of “issues of contention” between the LEA and the families. Given that there is significant variation in the issue selected by the SEN Tribunal for discussion, this could lead to accusations of unfairness.

Almost every SEN Tribunal member who responded to our questionnaire accepted a continuation of the present segregated special schools system. Such a universal acceptance of the *status quo* will be a cause for concern for many parents and professionals who have a vision of an inclusive education system which challenges the practice of segregating children.

The respondents to our survey also commented upon the child’s impairment in a way that suggested their view was under pinned by the medical model of disability, perpetuating a negative view of the child’s ability and potential. Such views were reflected in two significant decisions made at a hearing where two families were seeking mainstream places for their disabled children (see Judgements (95/4 &5).

How Independent are the Independent Special Needs Tribunals?

Recommendations

1. The law should be changed to give disabled children the right to attend their local mainstream school and provided with appropriate support.
2. The SEN Tribunal should immediately appoint significantly more disabled people and parents of disabled children to the panels.
3. The SEN Tribunals should have more definitive procedures which are open to public scrutiny. There should be much more information about the process of decision making and the rationale for the final decision.
4. Parents should have the right to question the potential for “conflict of interest” in the composition of their particular SEN Tribunal.
5. More thought should be given to the participation of children who are the subject of the hearings.
6. There should be an end to the categorisation of children based upon negative labelling.
7. SEN Tribunal members should be available to the public through a “contact address”, not the SEN Tribunal Office.
8. The decision of the SEN Tribunal should be open to further challenge, this is such an important decision in the child’s life, parents should be guaranteed the ‘right’ of an appeal to The Secretary of State for Employment and Education.
9. All SEN Tribunal members should have training in the emergence of a “Social Model” of disability.

How Independent are the Independent Special Needs Tribunals?

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How Independent are the Independent Special Needs Tribunals?

Appendix 1

Tribunal Lay Members

<u>Name</u>	<u>Town/Country</u>
Ms Laura Ashworth	Harlow, Essex
Mr Roger Baker	Lydney, Glos.
Ms Germaine Ballinger	Stroud, Glos
Mrs Mary Barker	Batley Green, Birmingham
Mr Robin Bartlett	Abingdon, Oxon
Mr Colin Beacham	Reading, Berks
Dr Arthur Blair	Clifton Grove, Nottingham
Mr Terry Bond	Coventry
Mr David Braybrook	Hampstead, London, NW3
Mr Jack Burn	Chester-le-Street, Co Durham
Mrs Anne Bush	Combe Dingle, Bristol, BS9
Mrs Gloria Cameron	Purley, Surrey
Mr Peter Cates	Shrewsbury
Ms Suzanne Chisholm	Swansea, SA4
Mr Stephen Colwill	Truro, Cornwall
Mr Ray Comish	Lancaster
Mr David Cook	Cheltenham, Glos
Mr Graham Cranmer	Alresford, Hants
Mrs Marilyn Cusack-Mckay	Edmonton, London, N9
Professor Ron Davie	Canonbury, London, N1
Mrs Janis Davies	Abergavenny, Gwent
Mr Jack Davis	Llandrindod Wells, Powys
Dr Jasmine Dawkins	Dawlish, Devon
Dr John Dunford	Hebden Bridge, West Yorkshire
Mrs Christine Emerson	Hebden Bridge, West Yorkshire
Mr Heddwyn Evans	Mold, Clwyd
Mr Keith Evans	Mold, Clwyd
Ms Joan Farrelly	Ealing, London, W13
Ms Sonia Ferguson	Stonebridge Park, London, NW10
Mr Eamonn Fetton	Wanstead, London, E11
Mrs Anne Fleeman	Sutton Coldfield, West Midlands
Mr John Fox	Radcliffe on Trent, Notts
Mr Graham French	Brighton, East Sussex
Mr David Fryer	Polgooth, Cornwall
Mrs Prue Fuller	Oxford
Mr Michael Gallivan	Sheffield
Mr Peter Gedling	Broadstone, Dorset
Mrs Caroline Gillespie	Ormskirk, Lancs
Mr Roy Goddard	Pinhoe, Exeter
Mr Robert Gosling	Ashburton, Devon
Mr Gavin Graveson	Ealing, London, W13
Mr Freddie Green	Deal, Kent
Dr Rajinder Gupta	Sutton Coldfield, West Midlands
Mr Gordon Hainsworth	Denshaw, Oldham
Mrs Ann Hartley	Shipdham, Norfolk

How Independent are the Independent Special Needs Tribunals?

<u>Name</u>	<u>Town/Country</u>
Mr Michael Hennessey	Nr Ellesmere, Shropshire
Mr Teddy Hutton	Oxford
Mr David Johnstone	Ravensthorpe, Northampton
Mr Gareth Jones	Llandre, Dyfed
Mrs Alison Kelly	London, NW5
Ms Claire Lazarus	London, N8
Mr Tony Lenney	Woodhouse Eaves, Leics.
Dr Stephanie Lorenz	Burley, Leeds
Mr Colin Low	London E8
Mr Derek Lucas	Towcester, Northants
Ms Kerena Marchant	Richmond-upon-Thames, Surrey
Mr Arthur Newton	Stockport, Cheshire
Mr Brian Norbury	London N5
Dr Christopher Nourse	Ipswich, Suffolk
Mrs Carol Orton	New Malden, Surrey
Mr John Paulley	Blandford Forum, Dorset
Mr Richard Pestell	Northampton
Mrs Joan Pritchard	Manchester
Mr Colin Radley	Knutsford, Cheshire
Ms Linda Redford	London, SW4
Mr Graham Reeves	Bromley, Kent
Ms Heather Reid	Swansea, SA3
Mrs Pamela Richardson	London E8
Mrs Jean Richardson	Taunton, Somerset
Ms Kay Rider	Hendon, London, NW4
Mr Michael Rose	Chelmsford, Essex
Mrs Yvonne Sewell	Bristol, BS19
Mr John Sheppard	Brighouse, West Yorkshire
Ms Sian Wyn Siencyn	Llandysul, dyfed
Mr Ivor Slocombe	Bradford-on-Avon, Wilts.
Mr Maurice Smith	Ashton-in-Makerfield, Lancs
Mrs Sheila Smith	Finchley, London, N3
Miss Ann Stockburn	Thirsk, North Yorkshire
Mr Michael Stone	St Albans, Herts
Mr Rashid Syed	London SW6
Mr John Talbot	Mirfield, West Yorkshire
Mrs Kathryn Temple	Lowestoft, Suffolk
Ms Ann Tinklepaugh	Highgate, London, N6
Mr Keith Tottman	Shawbirch, Telford
Mrs Gail Treml	Croydon, Surrey
Mr Peter Walker	Werrington, Peterborough
Mr Keith Worters	Shanklin, Isle of Wight
Mr Hamid Zagzoule	London, SE15

How Independent are the Independent Special Needs Tribunals?

<u>Chairpersons Name</u>	<u>Town/Country</u>
Mr John Akers	Ottery St Mary, Devon
Mr Richard Allfrey	London, N1
Mr Anthony Askham	Southampton, Hants
Mrs Charlotte Beatson	Old Marsto, Oxford
Mr Laurence Bennett	Liverpool, L25
Mr Kieran Bond	Shrewsbury, Shropshire
Mrs Jennifer Buckle	Kenilworth, Warwickshire
Mr Neil Confrey	Cardiff, CF2
Ms Fiona Cownie	Leicester
Mr Anthony Davies	Stoke-on-Trent, Staffs
Mrs Marian Davies	Westbury Park, Bristol, BS6
Mr Michael Dorsey	Leeds, LS7
Mr William Evans	Belper, Derbyshire
Mr Peter Grobel	Effingham, Surrey
Mrs Jean Hare	Cardiff, CF2
Mr Mark Hinchliffe	Cullingworth, Bradford
Mr James Horan	Stockport
Mr Stewart Hunter	London, SE19
Mrs Jane Lom	Whyham, West Sussex
Mrs Helen Lusby	Congleton, Cheshire
Mr William McKenna	Carlisle, Cumbria
Mr Timothy Molander	Norwich, Norfolk
Mrs Celia Morris	Canterbury, Kent
Mr Simon Oliver	Wokingham, Berkshire
Ms Fiona Philips	London, NW7
Mr Andrew Pitts	Coventry
Mr John Reddish	London, EC4
Mrs Margaret Richards	Leeds, LS16
Mr David Wall	Whitby, North Yorks
Mr Richard White	Croydon, Surrey
Miss Jane Williamson	Tarporley, Cheshire