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To: Keith Reed - Twins and Multiple Births Association (TAMBA)
Date: 16 February 2010
Subject: **Twins at school: legal basis for school classroom policies and any rights for parents**

Summary

The information contained in this memorandum is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained in this memorandum as if it were legal or other professional advice. Please seek independent legal advice for confirmation of your legal position.

Maintained primary schools are under no obligation to consult with parents of twins and other children from multiple births or have in place a written policy on how children are placed into classes.

Affected parents should first look at adopting informal means of resolving any problem by meeting with the classroom teacher and head teacher. If the school and parents cannot resolve the problem informally, the parents should consider complaining to the governing body under the school's complaints procedure and, if necessary, the Secretary of State.

Issue

- Whether parents can challenge the decision/policy of a school to separate or keep twins and other children from multiple births together in class?

Assumptions

- The twins or multiple birth children have been admitted to the same primary school where there is more than one class/form in the year.¹
- It is a state funded/maintained school.² We are focusing on primary schools since secondary schools tend to have a diversity of classes and options where separation is more likely to occur by default.³

¹ i.e. full time education suitable for children between the compulsory school age up to 10 years and six months (includes full or part time education for 2 year olds up to compulsory school age as well) (see section 2 of the Education Act 1996 (as amended) for the definition of primary education)

² A maintained school means a community, foundation or voluntary school or a community or foundation special school (see section 176(3) of the Education Act 2002 (as amended))

³ p 401, Pat Preedy and David A. Hay 'Meeting the educational needs of multiple birth children' Early Human Development (2006) 82, 397-403

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Research/Analysis

1. Policy on classroom selection: what is the situation?

Whether or not twins and other children from multiple births ('Twins') are separated at school appears to be determined by individual school policies/decisions.

Each maintained school must have a governing body.⁴ Governing bodies are responsible for the conduct of a maintained school.⁵ Governing bodies of schools are required by statute to make sure certain documents and policies are in place.⁶ However, there is no legal requirement for governing bodies to have a policy on how to determine which class a particular child should be placed in. Therefore schools are unlikely to have a particular policy on class selection in relation to Twins and where such a policy is in place, it is unlikely to be written down.

It remains up to individual schools to determine how Twins should be placed in classes following admission. There is also no obligation on the school to consult the parents with regards to this decision.⁷ However, parents can take steps to make sure the school takes into consideration their opinion as to whether their Twins should or should not be separated in class, albeit after a decision is made by the school, as follows: arranging a meeting with the classroom teacher/head teacher; making a complaint to the governing body and/or Secretary of State; or bringing an action under the judicial review procedure.

2. Parents and schools: the right to be consulted

Parents are under a duty to ensure their child receives 'efficient full-time education suitable to [their] age, ability and aptitude, and to any special educational needs [the child] may have.'⁸ Therefore, parents who feel their Twins are not receiving suitable education given their unique requirements are justified in considering to pursue the following options.

2.1 Arranging a meeting with the classroom teacher and/or the head teacher

Where parents of Twins are dissatisfied with the decision of a school to separate/keep their Twins together in class, the parents affected should arrange to meet the classroom teacher and/or the head teacher to discuss their concerns in the first instance.

The obvious benefit of attempting to resolve the problem informally in the first place is that: (i) the issue can be resolved quickly; (ii) the issue can be resolved without either party incurring the significant time and cost otherwise involved in pursuing a more adversarial/formal procedure; and (iii) attempts to resolve a problem informally in the first place is a pre-condition in most cases of being able to adopt more formal procedures at a later date.

The meeting will also allow the parents concerned to find out more about the school's position and if there was any particular reason behind a particular decision taken by the school to separate or keep the children together in class. It may be that the school has never thought to put in place a written policy on Twins and their classroom selection.

⁴ Section 19(1) of the Education Act 2002 (as amended)

⁵ Section 21(1) of the Education Act 2002 (as amended)

⁶ Please see Annex 2 of the latest Guide to the Law for School Governors available at the following link:

<http://www.governor.net.co.uk/publishArticle.cfm?topicAreaId=26&contentId=1347&pageStart=1&sortOrder=c.publishDate>

⁷ *Hansard*, 2 December 2009; Vol. 501, c. 836W

⁸ Section 7 of the Education Act 1996 (as amended)

Where, however, parents are unsatisfied with the outcome of their meeting with the classroom teacher or head teacher, the school should have a formal complaints procedure that parents can follow.⁹

2.2 Complaints procedure

2.2.1 Written complaint to the governing body

Governing bodies are required to put in place and publicise procedures which deal with all complaints relating to the school.¹⁰ In putting together the procedures, the governing body must have regard to any guidance issued by the Secretary of State.

Parents should contact the school for a copy of its complaints procedure if they have not already been given a copy or cannot find it on the school's website. The complaints procedure will stipulate the details and procedure of how to make a formal complaint to the governing body.

2.2.2 Written complaint to the Secretary of State

A written complaint can also be made to the Secretary of State by parents where they feel the governing body or local education authority has (i) acted or has proposed to act unreasonably,¹¹ or (ii) has failed to fulfill any duty imposed under the Education Act 1996 (as amended).¹²

A written complaint will trigger the power of the Secretary of State to consider the decision in question. Where the Secretary of State finds the governing body has acted unreasonably, the Secretary of State can direct the governing body to take a particular action. As a result, where parents feel the decision of a governing body is unreasonable following a complaint under the school's complaints procedure, the parents may write to the Secretary of State.

Please note that the Secretary of State and local education authorities are under a duty to educate pupils taking into account the wishes of the parents.¹³ This duty compliments the duty of the Secretary of State to review decisions by governing bodies which are unreasonable and illegal in receipt of a written complaint from affected parents.

Further information on how to make a complaint to the Secretary of State and other institutions (where applicable) is available online. Please visit the government's online service (www.direct.gov.uk)¹⁴ and the Advisory Centre for Education website (<http://www.ace-ed.org.uk/>) for more information and guidance.

2.3 Judicial Review

It is possible that the decision of the school's governing body under the complaints procedure could be reviewed under judicial review. Judicial review is a special procedure by which the Court will review a decision, action or failure to act of a body exercising public functions. It should be noted, however, that it will be more difficult to review the original decision of the school to separate/keep Twins in the same class given that most schools do not have a policy in place, let alone a written policy, for the Court to review.

⁹ http://www.direct.gov.uk/en/Parents/Schoolslearninganddevelopment/YourChildsWelfareAtSchool/DG_4016106

<http://www.ace-ed.org.uk/advice-about-education-for-parents/advice-booklets/making-a-complaint.htm>

¹⁰ Section 29 of the Education Act 2002 (as amended). N.B. Amendment pending.

¹¹ See section 496 of the Education Act 1996 (as amended)

¹² See section 497 of the Education Act 1996 (as amended)

¹³ See section 9 of the Education Act 1996 (as amended)

¹⁴ http://www.direct.gov.uk/en/Parents/Schoolslearninganddevelopment/YourChildsWelfareAtSchool/DG_4016106

It should also be noted that the role of the Court in applications for judicial review is solely to review the 'process' by which a decision was reached. The Court does not review the merits of a decision.

If an application is successful, the Court may award the following remedies: quash the decision made by the body in question; make an order prohibiting the body from acting beyond its powers; make an order requiring the body to carry out its legal duties; make a declaration; impose a stay or injunction; or award damages.

Judicial review is a complex and difficult route to take due to being defined by case law. As a result, there is no guarantee that the Court will give applicants the initial permission required to proceed with a judicial review application or that any judgment will result in the parents of Twins being consulted and the decision of the school being reversed. Independent expert legal advice should be sought by parents considering judicial review due to the specialist nature of this area of law.

Please note that the claim form for judicial review must be filed no later than three months after the grounds upon which the claim is based first arose.¹⁵

Conclusion

Maintained primary schools are under no obligation to consult with parents or have in place a written policy which determines how children are allocated classes.

As a result, it is always best where possible for parents of Twins likely to be affected to take preventative measures: parents of Twins should contact all preferred/potential schools prior to the start of the admissions process to find out each school's position on Twins and classroom allocation.

Where Twins have been placed in a school which has failed to take into account the Twins' particular needs, informal steps should first be taken to resolve the problem before looking at the complaints procedure of the school and then making a written complaint to the Secretary of State.

Judicial review may also be available to parents where a school fails to take into consideration their wishes or the Twins particular needs. However independent expert legal advice should be sought immediately following a decision by the governing body to determine the likelihood of success in what is a complex and uncertain area of law.

Despite what appears to be promising steps for parents of Twins in relation to the school admissions code, the recognition that Twins require special and regular consideration following admission has not come to fruition. In the meantime, parents should consider writing to their local MP in support for a change in the education law so that it provides for the particular needs of Twins once admitted to a maintained primary school.

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¹⁵ CPR Part 54.5