



Case Study – Alana

EA Breaches Human Rights of Disabled Child

Introduction

This case study highlights the difference in treatment between disabled and non-disabled school children as Northern Ireland emerged from the Covid-19 pandemic. Angel Eyes NI and Children's Law Centre (CLC) observed that the world was not opening up at the same pace for all children. Many disabled children and also adults, who in reality had a greater need for a return to normal service, were simply left behind, forgotten and abandoned.

Case Summary

Alana* is a young child with multiple and profound disabilities including serious medical conditions, visual impairment and intellectual disability. She requires 24-hour care due to her complex medical needs. She is legally entitled to a specialist package of education and healthcare in order to live a full and decent life, reach her full educational and developmental potential and to experience full inclusion with peers. Healthcare professionals assist the family at home. She has a statement of special educational needs which sets out all of the provision and support she is entitled to receive in a local special school from a range of trained specialist staff.

The Education Authority refused to transport Alana to her special school during her P1 and P2 years and she had no alternative means of travel. The refusal of transport blocked Alana's access to specialist education. Alana's case was referred by Angel Eyes NI to the Children's Law Centre after it became clear that difficulties in accessing

education were not resolving despite all reasonable attempts to raise the issues which really should have been capable of informal resolution with a child-centred “best interests” approach.

The reasons the EA gave were related to Covid-19 and Alana’s need for ventilation and suction which they said risked causing an infection to the school transport driver. Before legal action was taken, there was no proper analysis of the facts of Alana’s case, no attempt to find mitigations for any perceived risks, no regard to disability equality duties and no thought given to the impacts upon this vulnerable child and her family, or the risks to the child caused by the outright denial of her right to education.

Alana had attended only one day of nursery school and, although she was a P2 child of compulsory school age at the time she came to our attention, she had never been to school or received any education whatsoever. Meanwhile, her younger sister, who has no disabilities, started P1 and went out every day to school in her new uniform whilst Alana was left at home in the care of her parents. Simultaneously, all across Northern Ireland, children travelled to school in buses packed to capacity, with no masks required.

Alana is one of a group of extremely isolated, medically vulnerable children who require ventilation and suction, and who were refused EA transport to school without any individual assessment of need or risks. CLC decided to take legal action on behalf of Alana through an application to the High Court to challenge the EA decision to refuse transport and failure to provide education.

The CLC legal team argued that prolonged and disproportionate Covid restrictions on school transport for reasons related to disability were unjustifiable and unlawful, amounting to a denial of the right to education.

Strategic Legal Impact

After protracted negotiations to seek and develop alternative educational and transport arrangements for the child, the CLC legal team secured landmark High Court declarations where the EA acknowledged that the Alana’s human rights to education and non-discrimination had been breached during the relevant time periods and she was treated differently to other children because of her disability.

Alana received important acknowledgement from the EA through agreed High Court declarations that, during specified time periods:

1. The EA failed in its legal duty to arrange her special educational provision in line with her statement of special educational needs;
2. The EA failed in its legal duty to arrange education otherwise than at school when she was unable to attend school;
3. The EA breached Alana’s human rights to education and non-discrimination and she was treated differently to other children because of her disability.

Alana’s case is a legal precedent in Northern Ireland due to the emphasis on adverse differential treatment for breach of human rights connected to disability. It sends a

loud signal to public authorities across all spheres of work about the fundamental importance of disability equality and respect for the human rights of disabled people.

Impact on the Child and Family

Alana requires care 24 hours per day due to her complex medical needs. School attendance is a primary protective factor for families with intense caring responsibilities who face numerous barriers to accessing services. This is why special schools were directed to remain open throughout the pandemic. Alana's parents suffered deep distress as they knew their daughter was being left behind and treated differently because of her disabilities as the rest of society returned to normal life. Without the stimulation of education, Alana's mood and energy were negatively affected which increased the care and attention she needed. Her parents were unable to give their younger child the time and attention that they wished to give. They sought resolution at every turn but could not make progress on their own despite being remarkable advocates for Alana. They felt isolated, physically and mentally drained and angry.

Whilst the legal proceedings were underway, the EA made arrangements for Alana to receive periods of teaching at home. It started to become clear, that when taught by a specialist teacher how to use Makaton signing, Alana had the ability to communicate with her family. This was simultaneously wonderful and heart-breaking for the family. Alana had lost this critical opportunity to learn communication skills over a very significant time period in the absence of specialist teaching.

The EA ultimately provided a specialist vehicle to transport Alana from the beginning of her P3 year and then put in place an evidence-based approach to risk management. Upon securing access to education in a nurturing special school environment alongside other children, with a wide range of enriching educational activities, the impact on Alana was clear to see. She immediately began sleeping better, had more energy and became much happier in herself. She is now fully enjoying social and sensory stimulation, loves going to school and is learning to communicate. The family have more ability to recharge their batteries and to carry out their intense caring role while also looking after their younger child. Alana now receives the special educational provision that she is entitled to and has settled well into her new routine.

**The case study has been anonymised and the child's name has been changed.*

Reflections on the cases

Speaking after the conclusion of the case, Rachel Hogan, the Children's Law Centre's SEN law specialist said:

"This is a significant legal milestone for these children, and for all disabled children who have been denied access to services which enable equality of opportunity. The High Court declarations reinforce the importance of ensuring that public authorities do not place unlawful systemic barriers in the way of disabled people, including disabled children. Failure to ensure accessibility of services throughout society is capable of breaching the human rights of groups of children who are protected by law.



"When we look at the experience of disabled children throughout Covid, including failures to identify mitigations before implementing restrictions, and also their much slower and ongoing return to normal life compared to others, we get a real understanding of the multiple barriers they face. In our legal casework, CLC sees a system-wide failure of equality for disabled children and their families that reaches far beyond the education sphere and into every element of daily life.

"The remedial actions taken and acknowledgements given to these children by the EA are therefore welcome as it is entirely right that public authorities should openly identify barriers to equality in order to enable these to be removed.

"We hope these landmark declarations serve as a significant reminder to public authorities and duty bearers more generally that disabled children and young people are entitled to equal treatment and equality of opportunity in all aspects of life."

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I'm pleased with the declaration, **I only wish it wasn't yet another case where a disabled child has to go to the courts to get access to services.** I hope the Education Authority learns from this and properly considers the impact policies have on disabled children.

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Parent
Speaking after the court case

Speaking about the collaborative *EqualEyes* project, Karen Wilson, Education Advocate Lead at Angel Eyes said: “This result demonstrates the benefit of collaborative work to identify needs and protect the rights of disabled children and young people. Through our work in the *EqualEyes* project, we were able to identify additional barriers to education and signpost across the project to our partners at CLC to find a legal remedy.”



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This result demonstrates the benefit of collaborative work to **identify needs and protect the rights of disabled children and young people.** Through our work in the *EqualEyes* project, we were able to **identify additional barriers to education** and signpost across the project to our partners at CLC to find a legal remedy.

Karen Wilson
Angel Eyes

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High Court Declaration for Alana

IT IS HEREBY DECLARED that:

1. The Respondent failed to discharge its obligations under article 16(5) of the Education (Northern Ireland) Order 1996 to arrange that the special educational provision indicated in the applicant's Statement was made for her at school, for the period of time from September 2020 to June 2022, save for periods whereby the applicant was unable to attend school because of illness or otherwise including 16th September 2021 to 24th September 2021 and 15th November 2021 and 28th November 2021 and other various dates;
2. The Respondent failed to discharge its obligations under Article 86(1) of the Education (Northern Ireland) Order 1998 to make arrangements for the applicant's suitable education at school or otherwise for various periods of time between September 2021 and February 2022 when the applicant was unable to attend school due to the lack of school transport or unfit to attend school but was fit to receive education at home;
3. The Respondent breached Section 6 of the Human Rights Act 1998 for the period of time from September 2020 to June 2022 insofar as there was interference with the applicant's rights under Article 2 of the First Protocol to the European Convention on Human Rights in conjunction with Article 14 ECHR, as there was interference with the Applicant's access to education on the basis of her medical condition and she was treated differently to other children in the State because of her disability.