

DECISION

Appeal No: 09-01200
Appeal By: Mr N. D and Mrs J. D
Against Decision of: London Borough of Barnet
Concerning: T D (born 22 August 2001)
Hearing Date: 9 November 2009
Tribunal Panel: Mr Anthony Davies (Tribunal Judge)
Mrs Margaret Stinton
Ms Anne Tinklepaugh

Appeal

Mr and Mrs D appeal under Section 326 Education Act 1996 against the contents of a statement of special educational needs made by London Borough of Barnet (LA) in respect of their son T (T).

Attendance

Mr Silas, Solicitor, represented Mr and Mrs D who both attended the hearing. Their witnesses were Ms Birnbaum, independent Educational Psychologist, Ms Farrugia, independent Speech and Language Therapist and Ms Lim, Occupational Therapist and SENCO at FH School. Ms Israel attended as a supporter for Mr Silas.

Mr McKendrick, Barrister, represented the LA. Its witnesses were Ms B, SENCO at F Primary School, and Ms Morris, LA Educational Psychologist.

Preliminary

We agreed to accept as late written evidence a report by Ms Birnbaum following a visit to F School on 12 October 2009. The LA had no objection.

Facts

1. T has severe specific learning difficulties encompassing all areas of the curriculum. He has significant difficulty in acquiring literacy skills and numeracy skills. He has an uneven cognitive profile, falling within the average range. T

has attended FH School, an independent school for children with specific learning difficulties, since September 2007. Previously he had attended L School from September 2004 and had repeated his reception year. He is educated in a year below his chronological age

2. The LA issued a statement of special educational needs on 5 March 2009 which named F School, a LA maintained mainstream primary school. Mr and Mrs D appealed against Parts 2, 3 and 4 of the statement. Their preferred school for T was FH School and a place continues to be available for him. The LA objected to parental preference for the school on the ground that it would be an unreasonable use of public expenditure for T to attend the school when appropriate provision could be made for T at considerably less expense by him attending F School.

3. Following negotiations prior to the hearing, the parties had produced a working document. Many of the amendments sought had been agreed between the parties. In particular, Part 2 of the statement was agreed, save for the final paragraph regarding a summary of his needs.

4. Ms Birnbaum had assessed T in April 2008. Using the WISC 1V, she had found that T had a full scale IQ of 62. Although his overall ability fell below the average range, Ms Birnbaum noted quite specific areas of strengths and weaknesses. The range of scores was wide with significant differences between working memory, at 0.2 centile, and the other scales. Further testing by her in March 2009 using the WASI found a full-scale IQ of 87, in the low average range. The scores on the verbal and performance scales had significantly increased. Ms Birnbaum stated this was as a result of T's increase in confidence, lowered anxiety levels and input at FH School. However, there was a significant discrepancy between T's verbal and performance scores.

5. T's levels of attainment were tested by Ms Birnbaum in April 2008. Using the WIAT-11, at a chronological age of 6.8 years, T achieved a word reading age of 4.8 years (0.1 centile), a pseudoword decoding age of 4.0 years (6th centile), a numerical operations age of 4.8 years (1st centile) and a spelling age of 5.0 years (2nd centile). Further testing in March 2009 by Ms Birnbaum, again using the WIAT-11, showed T's word reading at 5.8 years (0.1 centile) and his reading comprehension at less than 6 years (0.3 centile). His pseudoword decoding was at 4.0 years and his numerical operations age was at 5.4 years and spelling at 4.8 years. Ms Birnbaum felt that T is beginning to show significant signs of progress, primarily in the building blocks he needs to address his learning such as confidence, motivation, concentration and ability to relate to others. His anxiety levels are reducing although he continues to significantly underachieve. Mr and Mrs D felt that T was happy at school and were impressed that he now seems keen to read. He still finds getting ready for school difficult, although now accepts this. T can be hard work but is making small steps of progress. He tends to play with younger children.

6. The papers stated that T struggled in Reception and by the spring term of 2006 his parents were paying for private LSA support for him and for an extra PE lesson. It was agreed that T would re-do his Reception year. T was referred to a Speech and Language Therapist, an Occupational Therapist and an Educational Psychologist. He was still finding it difficult to concentrate and by April 2007 it was agreed that he would need full-time support. There were concerns about his self-esteem and confidence. However, following the private assessments, his parents realised that his position at L School had become untenable and moved him to FH School in September 2007. He has difficulties with attention and concentration. He had difficulties remaining seated for any period of time. He needs help with personal organisation. His self-esteem in relation to himself as a learner is low and he started to feel left out by other children. He finds it difficult to initiate social interaction but is well-behaved in the classroom. He has number of difficulties in relation to his motor functioning skills.

7. Regarding the provision of speech and language therapy and language difficulties, Mr and Mrs D were seeking a minimum of 75 minutes speech and language therapy each week in a combination of individual and group sessions. The LA proposed a programme devised and monitored by the therapist and delivered within school by a teaching assistant. We heard that at FH School, he received 1x30 minutes sessions on a 1:1 basis to develop social communication skills. The school adopt a multidisciplinary approach and the therapist works in a group for speaking and listening for 1 hour a week and developing sentence skills for half an hour a week and is also involved in play duty and PHSE. T is in a class of 11 children, all of whom have language needs.

8. Ms Farrugia had assessed T in July 2009. She found a significant discrepancy between his expressive language and receptive language. He has very variable receptive language skills. His auditory processing is slow. He has difficulties with his ability to make inferences and has a degree of word finding difficulty. He has severe difficulty in the development of concepts, auditory processing, memory and understanding of abstract language. He has difficulties with phonological awareness. She had recommended 75 minutes therapy each week working on attention and listening skills and in development of concepts. She said that the Speech and Language Therapists, the teachers and Occupational Therapists should provide a cohesive and holistic approach. T also requires a weekly social communication group. She said that despite the intensive support, his progress has been very slow and initially there were concerns about whether FH School could meet his needs. This fact serves to reinforce the severity and complexity of his needs. She also said that T has huge anxiety levels.

9. Ms Farrugia told us that a programme delivered by school staff was not appropriate. T requires a trained therapist. T did not have a language delay. A therapist is able to make adjustments to any plan and sometimes it is necessary

to re-think a programme which a TA cannot do. T has difficulties with phonological awareness and with language. He does not have the ability to make educated guesses. There are 2 full-time speech and language therapists on site at FH School. Ms Farrugia felt that in a mainstream school T could switch off as he requires everything spelt out to him. She said that she had assessed T at FH School. Previous assessments had been at the clinic. T had been previously assessed by Jenny Patterson, PCT speech and language therapist, in 2008. His receptive language had been assessed and his scores were below the average range although he only needed one further raw score to bring the overall score within the normal range. She said that his receptive language profile is uneven and listening and attention skills would adversely impact on some of the scores.

10. Ms B said that the whole school has half termly 6 weeks blocks of input from the speech and language therapists who come in and work with specific children. Reviews are held at the end of 6 weeks and targets left with the school. A TA carries out small group work with approximately 3 children all with higher language skills than T. 2 children have ASD and 1 has specific language difficulties. There are 3 classes for year 3/4 children and 3 classes made up of year 5/6 children. The children have a wide range of abilities and staff are trained to deliver the curriculum to such a wide range. The class size is approximately 31. She said that she would want a TA to be trained in teaching children with specific learning difficulties and she would expect to recruit such a TA from a specialist agency. She had not spoken to the agency as to whether such a TA was available. A new speech and language therapist has recently started at the school.

11. Regarding the need for occupational therapy, Mr and Mrs D wanted provision of direct therapy twice a week from a therapist based on site as an integral part of the school team. They wanted a programme to address handwriting difficulties and further specific programmes such as brain gym exercises with half termly monitoring by the therapist and the development of a sensory diet to help T respond to various sensory input within the classroom. The LA agreed to the provision of a block of six individual sessions and the provision of a therapy programme implemented by school staff. This provision would be subject to further assessment. Rob Davey, senior PCT occupational therapist, had assessed T in August 2009. He noted T's low self-esteem and difficulty responding to verbal instructions. Other dyspraxic children at F School have attended an outside clinic that does not work within the school. T would be most likely to receive occupational therapy there.

12. Joanna Moore, independent Occupational Therapist, had assessed T in April 2009. She found that T's fine motor skills were on the 1st centile. She felt that he has significant difficulties in all areas of his sensory motor, visual perception and development level of independence. He is dyspraxic and has

underlying sensory processing difficulties. All these will have an impact on his education. She therefore made the recommendations contained in the parental amendments sought.

13. We were told that F School has 311 pupils on roll. There are 13 teachers. Ms B informed us that she has 3 1/2 days of SENCO duties and a half day with one specific pupil who is statemented. She has additional SPLD qualifications. 2 TA's are higher level and 1 is a learning mentor. The High Incidence Support Team is available to call for advice. The Educational Psychologist is available for 5-6 visits a year. CAMHS can be accessed at the lowest tier. The school has 3 children with statements and 2 are in the process of being statemented. There are 15 children at school action plus and 30 children at school action with a range of needs from specific learning difficulties and physical difficulties. There is 1 child statemented with specific learning difficulties. There are no behavioural difficulties children and the school has had no permanent exclusions.

14. The class teacher is a music specialist and we heard that children sing the register. Children are split into year groups for numeracy for one hour a day. A TA is in the class for 50 to 60% of the time. The TAs have received inset training in autism, dyslexia, and speech and language on a rolling programme. We were told that the National Curriculum levels in Year 3 are between Level 1 and 3, with 2 children at Level 1. No children are on the higher P levels. T's levels of attainment in March 2009 were P6 for writing, P7 for maths, P8 for reading and Level 1 for speaking and listening. Ms B acknowledged that the school was quite full and most classrooms were small. There are rooms available for withdrawal and small group work. Lunch times are mixed but are supervised. There are 2 daily breaks which are also supervised. There is an IT suite of 16 computers. It was agreed that T could go into Year 3. Next year there would therefore be a number of new children joining the group. Ms B acknowledged that T would find a vertical grouped school a significant challenge.

15 T's statement made provision for 21.44 hours of LSA support together with 5 hours of specialist teaching. F School had written in February 2009 that in order to meet T's additional needs, the school required regular input from the therapists, significant training in SPLD difficulties for TAs and an increase of the proposed statemented 21.44 hours of support. The admission of another child to the year group would cause organisational problems and also one of space within the school. Ms Morris said that she had observed T for half an hour in October 2008. The curriculum could be differentiated for him by the class teacher and the LSA planning carefully. It would be of benefit to T to have peers with ability above his own. She said that FH School had prescribed objectives for T in his recent IEP and that these could be met at the F School.

16. Ms B said that she presently works 4 days a week which can be extended to 5 days a week although this had not been agreed with the Headteacher. She felt that some of her work commitment could be handled by a TA. She felt that

2x30 minutes withdrawal would be more effective for T. His attention and concentration difficulties are best met in very short sessions and withdrawal takes place a lot at the school. The learning mentor would also work with him individually. She said that she would need to look at the timetable for integrating social communication work and speech and language occupational therapy programmes and timing of this would depend on how fast he responded.

17. Ms B felt that one or two teaching assistants would be best for T. With regard to T's self-esteem, it was acknowledged that he would be the lowest functioning child although children are very supportive and TA's are in the playground to support vulnerable children. Ms B felt that a phased transfer in the spring term should be carried out for T. Ms Birnbaum pointed out that T needs time to adapt to a change of placement. He has severe specific learning difficulties, his attainment scores are at the lowest centile. He would be the only child in the class with these attainment levels and he would be well aware of what other children would be achieving. He shuts down even on a 1:1 basis. Ms Birnbaum felt it was an attempt to fit T into existing provision. He had been in a mainstream environment in a class of 18 but this had failed. A class of 31 brings sensory issues particularly in small classrooms. He will feel very excluded in terms of accessing the curriculum. He does not like to be singled out. The gap in attainment levels is smaller at FH School. Five hours of specialist teaching would be taught in a vacuum and he requires a whole school approach.

18. The placement cost of FH School is £25,485 a year and there are transport costs of £2400 a year as FH has a school bus which collects from a local point. There could conceivably be further costs from home to this point. Should costs be the deciding factor, Mr and Mrs D agreed to be responsible for transport costs. The additional cost to the LA of placement at F School comprised the AWPU cost of £2496 per annum. Additional teaching and TA costs amount to £19,455 a year making a total additional cost of £20,051. Additional therapy costs, if ordered, would amount to prop to £75 an hour. Agency TA costs may be higher. There appeared to be a discrepancy in costs of approximately £5000 per annum between the 2 placements.

19. Mr McKendrick said that the LA acknowledged that T was a child of complex difficulties. He would receive therapy input. The PCT speech and language report had acknowledged difficulties with receptive language, although milder. He argued that Ms Farrugia had not described his difficulties as severe in her report. He wondered why 75 minutes direct therapy was being requested which is different to that being provided at FH School where progress is acknowledged. He argued that a well qualified teacher will be able to differentiate the curriculum. There was only one child at FH School with T's profile and yet this has not proved a barrier to him. The timetable at FH School showed 11 hours withdrawal and yet progress was acknowledged. Withdrawal therefore is not a significant barrier to learning. T would be supported by a trained TA with specialist teaching. The school will involve outside agencies. He

argued that although the cost difference was not extensive, it was still significant.

20. Mr Silas said that T's parents would like T to go to a mainstream school. However he had been to a mainstream school with full-time support which had failed. He is making steady progress at present. The therapists from the PCT carried out their assessment clinic and had not assessed in the school. T's difficulties have a significant impact on curriculum access. He has fragile and low self-esteem. Even at FH School, progress has been limited due to the severity of T's difficulties.

Tribunal's conclusions, with reasons

We carefully considered the written evidence submitted to the Tribunal in advance and the evidence given to us at the hearing. We also took account of the Code of Practice and the relevant sections of the Education Act 1996 and the Special Educational Needs and Disability Act 2001.

Our conclusions are:

A. The agreed amendments to Part 2 of the statement should be made. The only outstanding issue in Part 2 relates to the final paragraph. We concluded that the parental amendment to this appears to us to be clear and self explanatory and would prefer this wording.

B. Regarding Part 3 of the statement, we concluded as follows:

1 T is a boy of largely average ability although with a significant discrepancy in scores as revealed by cognitive testing carried out by Ms Birnbaum. He is achieving significantly below his chronological age and level of ability. He has severe specific learning difficulties which affects all areas of the curriculum and his access to this. T had been educated in a mainstream environment, albeit in smaller classes but had received full-time support. It appears that this had not been successful. Even after being placed at FH School, there were concerns that he was not appropriately placed. Despite the intensive provision that he has received since 2007, his progress has not been rapid. However, he does appear to be learning some of the basic skills required to help him learn. We have considerable reservations about placing him in a mainstream school. We consider that he should be taught in small classes where he can access the curriculum and be involved in all lessons. The model of differentiation through a TA will not be appropriate and will only increase his isolation. T now requires intensive specialist provision in order to address his significant literacy and numeracy difficulties. He also requires a period of intensive language input to focus on his difficulties in this regard. We therefore concluded that T requires specialist placement. We concluded that the statement should refer to a specialist placement where there is a full understanding of his complex needs

rather than just referring to an understanding of dyspraxia as proposed by the parents first amendment.

2. As stated earlier, we concluded that T should be educated in a small class. We also concluded that the integrated and holistic approach as recommended by Ms Birnbaum would be appropriate for him. She agreed that this will enable will help T to generalise his skills across the school environments rather than being taught in isolation during withdrawal sessions. We therefore agree with the parents second amendment to Part 3.

3. Regarding paragraph 1a, in view of his significant difficulties, we do agree that T requires teaching by teachers with qualifications and experience in teaching children with specific learning difficulties. The need for multisensory teaching is agreed. We are concerned that the provision of a LSA may increase his dependency. T's difficulties now require intensive specialist provision of specialist teachers in small classes with a high adult/pupil ratio. The amendments to paragraph 1 may should be made to show that T`s class teachers should be qualified and experienced in teaching children with specific learning difficulties.

4. Regarding paragraph 3a, we also agree that T should be with a peer group providing appropriate language and behaviour role models. As stated, we have concerns that the provision of the LSA for T in differentiating work will not be appropriate and that he should not be singled out which he does not like. We do agree that the work should be differentiated for the whole class in order that T should feel involved and can participate in all lessons. We therefore agree the parental amendment in this respect.

5. Regarding the provision of speech and language therapy, T has considerable and complex language difficulties. He has phonological difficulties and has poor auditory memory. He has pragmatic language difficulties. We do not consider that the provision of a programme implemented by the TA is sufficient. Ms Farrugia had carried out her assessment within the school setting. She recommended direct work by the therapists and we agreed with her argument that the therapist is required to deliver this input. We also agree that in T's case, an integrated approach between the therapists and teachers is needed as recommended by her. The social communication group has also been agreed. We therefore concluded that T`s complex needs require the provision advocated by Ms Farrugia. It appears that FH School was delivered this amount of therapy in a different form. However, in view of the fact that the school is a special school with on-site therapists, we would leave it to the discretion of those therapists to deliver the amount of therapy recommended by Ms Farrugia as they see fit. We also agreed the amendments to paragraph 5 to promote the holistic approach. We also considered it appropriate that the occupational therapist should carry out sensory integration work which may serve to reduce T`s anxiety levels.

6. Regarding provision of occupational therapy, we had reservations regarding sensory issues at F School. We do agree that some direct therapy should take place and that it would be beneficial for this being integrated. The LA's provision left it to the therapist to review provision. We do not consider that this is correct in leaving it to the therapist to determine provision. Recommendations from Joanna Moore had been made following a full assessment. We therefore concluded that the provision recommended by her should be made. However, we regarded some of the recommendations as extremely detailed and prescriptive and therefore we have amended these as we felt that the proposed amendments fettered the discretion of the therapist who will be on-site and on whose professionalism the school will need to rely.

7. There were amendments sought regarding touch typing and alternative technology. Whilst we agree the need for this, having regard to dyspraxic difficulties, we felt the proposed amendments were very prescriptive and, if anything, would belong to an individual education plan rather than to a child's statement. There was also an amendment sought on paragraph 7 regarding self-help skills to be transferred to the home environment where parents would also require input. We do not regard this as necessary and there appear to be no educational reason why parents should receive teaching and training and this was not argued that the hearing.

C Regarding Part 4 of the statement, we concluded that we had grave reservations over placement of T at F School. There appears to be planned phase integration during the spring term. T would be placed in a mixed class and therefore have to get used to new peers in September 2010, just over a term after he had been placed in school. He would have to be placed in a large class of 30 children and withdrawn for additional provision. T would receive full-time support. As stated, we consider that this would make T stand out and would increase his sense of isolation. We have doubts that he would be able to meaningfully access the curriculum through the TA on a full-time basis. We have doubts over his ability to transfer skills from specialist teaching into the mainstream classes. We also have doubts as to whether his social skills would improve within such a large class and he would only be taught this in a very small group of 3 with 2 ASD children. It seems that there would be further withdrawal for therapies which we have considered necessary for him. We have concluded that a holistic and integrated approach where T is taught in small classes and where he can be involved in all lessons is appropriate for him, having regard to the severity of his difficulties. We therefore concluded that placement at F School is not appropriate as it would not be able to offer this provision.

D. Having concluded the above, it is not necessary to consider the issue of costs. Nevertheless, the discrepancy between placements is not large and if costs had been the deciding issue, we felt that the provision of the small classes and the integrated approach and the fact that T now appears to have settled into

a learning pattern would outweigh the discrepancy in costs and that therefore it would not be an unreasonable use of public expenditure for T to continue to attend FH School.

Order

The LEA to amend Parts 2, 3 and 4 of the statement dated 5 March 2009 by substituting the terms of Parts 2, 3 and 4 of the statement annexed to this Decision

Dated: 23rd November 2009

Anthony Davies

Tribunal Judge: