

DECISION

Appeal No: 06-02518
Appeal By: Mr E and Mrs. E
Against Decision of: North Somerset Council
Concerning: A (born 11.04.1996)
Hearing Date: 13 December 2006

Appeal

Mr and Mrs E appeal under Section 329 of the Education Act 1996 against the decision made by North Somerset Council (LEA) to refuse a Statutory Assessment in respect of their son, A.

Attendance

Mr and Mrs. E, who both attended the hearing, were not legally represented. Their witness was Mr U, Educational Psychologist.

Ms. Packer represented the LEA. Their witnesses were Mr. S, Head Teacher, CB School (CB) and Mrs B, Educational Psychologist

Preliminary matters

A. Mr and Mrs. E asked the Tribunal to accept by way of late written evidence the report from Mr. U, dated 23 October 2006. Ms. Packer did not object to these documents being tendered in evidence and as it satisfied the conditions in Regulation 33(2) of the Special Educational Needs Tribunal Regulations 2001, we accepted this report under Regulation 33(1).

B. Mr and Mrs. E had given prior notice that they would be calling Mr. U as their witness. Ms. Packer had no observation to make in this regard.

Facts

1. A is ten years eight months old. He received a diagnosis of Aspergers Syndrome at the age of four. He has a history of delayed learning and social communication. A transferred from HM School to CB Community Primary School (CB), a mainstream primary school in Autumn 2003. Mr and Mrs. E withdrew A from CB in September 2006 and he is currently being educated at home.

2. Mr. and Mrs. E appealed unsuccessfully to SENDIST against the LEA's refusal to conduct a Statutory Assessment of A's needs in 2002 and a Note in Lieu was issued. This document has not been updated since that time. Mr. and Mrs. E renewed their request for a Statutory Assessment in January 2003. The Statutory

and Complex Issues Panel decided that A's needs could be met at School Action Plus.

3. A received Audit Support from December 2003 to July 2005. He received seven hours 1:1 dedicated LSA support which consisted of five hours support in Literacy per week and in activities such as PE and Swimming. Numeracy was taught in a small group.

4. This support ceased in September 2005 as it was decided that A no longer met the criteria for that level of funding on account of his progress. Mrs. B confirmed that evidence which led to the withdrawal of funding was submitted in about March 2005 and pointed to two documents in the bundle which had formed part of the evidence submitted. In the document submitted by the Senco at CB which appears at page 84 of the bundle, it is written that A is only able to access the curriculum with support. Academically, he was beginning to make progress in some areas with carefully targeted support. A is described as panicky and tearful when individual support was not available for him. This opinion was confirmed by Ms S, the class teacher. At page 86 of the bundle, she describes A as working well below the expected levels of Year 4 in Numeracy. When working independently, he achieved little in terms of moving his understanding on.

5. Mrs. B said in oral evidence that it was necessary sometimes to paint a rather grim picture in order to obtain funding. No action was taken when funding ceased on account of the results A was achieving. From September 2005, A's support package included specific support for Literacy and Numeracy. His support for Numeracy was provided through the resource base. The class A was based in received 5.5 hours additional Learning Support Assistance (LSA) each week.

6. A had access to a learning mentor for 1½ hours per week to address his self esteem and social skills. Mrs. B continued to hold termly review meetings.

7. It is said in the LEA case statement that evidence from CB and recent assessment made by Mrs. B showed that A had made good academic progress and cited A's options SAT's results which were Reading 3C, Writing 3C, Maths 3C and Science 2B. The LEA said that the evidence submitted indicated that CB were able to meet A's needs as he was making steady progress with the provision that the school had put in place and was settled in school.

8. Mrs. B notes in her report of February 2006 the difficulties which had arisen. Maths remained an area of concern, A was reluctant to come to school, his comprehension remained delayed and he needed a significantly modified curriculum.

9. By 11.06.2006 Mrs B reported there had been a deterioration in A's behaviour and an increase in anxiety levels. He would vomit at least twice per week and attendance had deteriorated. A would swear at home and threaten to stab the family. A referral was made to CAMHS.

10. In a report dated 21 June 2006, Mrs. B said that A had not maintained a level of progress in verbal skills which he demonstrated in 2001. The results indicated that at a chronological age of ten years two months, that A's verbal cognitive skills

were at the twelfth percentile, his non-verbal skills at the fifth percentile and his special skills at the fourteenth percentile. He had difficulties both in understanding and expressing what he wanted to say. Although A's basic reading and spelling skills are age appropriate, his reading comprehension was one year eight months below chronological age. A's numeracy skills continued to be significantly delayed, scoring in the second percentile, giving him an age equivalent of six years seven months. In a letter dated 16 June 2006, Miss W, Inclusion Leader at CB, reported that Mrs. B felt A may have dyscalculia. In his report dated 23 October 2006 Mr. U said A presented with a range of special educational needs which are clearly linked to his diagnosis of Aspergers Syndrome / High Functioning Autism, and with a very mixed profile of ability. Whilst his spelling was within the average range, this was a skill very much in isolation. His poor comprehension was as a consequence of the language and social communication difficulties associated with Autistic Spectrum Disorder. A's weakest cognitive skills were evident in his verbal comprehension skills, where he exhibited a very literal understanding and poor knowledge of every day concepts.

11. Mr. U did not accept that A's skills in word reading were age appropriate as suggested by Mrs. B. With regard to reading comprehension, Mr U's results suggested a deficit of approximately three and a half years as opposed to the one year eight months found by Mrs. B. In Mr. U's opinion, the more recent score more accurately reflected A's degree of comprehension and understanding. This was supported by his poor verbal comprehension score as well as parental observations.

12. Mr. S confirmed the LEA's position that in his opinion, A's needs were being met by the provision school had put in place and that he was making steady progress. Mr. S confirmed the deterioration in A's attendance at school.

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 into account 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. Paragraph 7.34 of the Code of Practice provides as follows:-

"In deciding whether to make a Statutory Assessment, the critical question is whether there is convincing evidence that, despite the school, with the help of external specialists, taking relevant and purposeful action to meet the child's learning difficulties, those difficulties remain or have not been remedied sufficiently and may require the LEA to determine the child's special educational provision"

Whilst it may well be that relevant and purposeful action was taken by CB in the period December 2003 to July 2005 when A received Audit Funding, we are not persuaded that relevant and purposeful action continued from September 2005, although that is the position maintained by the LEA. Given, however, the extremely poor progress made by A as reflected in the most recent test results administered by

Mrs. B and more recently by Mr. U, we find that A's learning difficulties remain or have not been remedied sufficiently. The LEA relied upon A's teacher assessment levels in his SAT's to show that his educational needs are being adequately met at School Action Plus. Whilst these are a guide to ability, they must be viewed in context. We have sympathy with Mr and Mrs E's view that it is difficult to reconcile A's maths SAT's results with the difficulties he is described as having by both Mrs. B and Mr. U.

B. It was agreed by Mrs B and Mr U that A needs support. We accept that A made progress when he received support and the breakdown in the mainstream placement occurred when this support was withdrawn. We share Mr. and Mrs E's grave concerns that without appropriate support, A will have the utmost difficulty in accessing the curriculum and developing his potential.

C. We accept Mr. U's evidence that socially A presents as an immature and extremely vulnerable pupil who struggles with the every day social demands of a school. These difficulties will become more manifest as he grows older. We accept that unless steps are taken to address A's current deficit in his social communication skills, he is at risk of significant social isolation in his future years at school.

D. The LEA is ordered to undertake a Statutory Assessment in respect of A E.

Order

1. That the LEA undertakes a Statutory Assessment in respect of A E

Signed

Chairman, Catherine Mather

21 December 2006