

DECISION AS TO COSTS

Appeal No: 06-02487
Appeal by: Mr and Mrs F
Against decision by: Hertfordshire County Council
Concerning: J

1. At the hearing of this appeal on 12 December 2006 an application for costs against the LEA was made by Mr and Mrs F under Regulation 40 of the Special Educational Needs Tribunal Regulations 2001 (as amended). As recorded in our decision notice we heard oral submissions from Mr Silas, representing Mr and Mrs F. Mr Read made no submissions on behalf of the LEA, but asked for time to seek advice regarding Mr Silas' representations. We therefore gave the LEA leave to present a written submission on or before 17 January 2007.

2. The LEA has elected not to make a submission. Having considered all the available evidence we make the following findings in the light of the proviso in Regulation 40 that an order for costs will only exceptionally be made:

- We find that, notwithstanding significant evidence of J's extreme difficulties in accessing mainstream education, the LEA continued to insist that a mainstream school would be appropriate for him without identifying, either in written evidence or at the hearing, a specific school which could be considered suitable.
- Given the uniqueness of J's needs and his experience of school in the past it was clear that there was no credible alternative for J to placement at the DN Centre at MG School. Our decision was not based on J's need for a Jewish school but on his need for an appropriate school. However it was clear to us that the LEA had not taken account of J's Jewishness and its impact upon his special educational needs, as it is required to do (*A v SENDIST and Barnet 2003*). The LEA called upon J's parents to pay fees for MG School without seeking to demonstrate actively that it could meet his needs in any other setting.
- We may properly make an order for costs if we are of the opinion that the LEA acted frivolously or vexatiously, that its conduct in resisting the appeal was wholly unreasonable, or that its disputed decision was wholly unreasonable (Regulation 40(1)(a) and (d)).

3. Having considered Mr Silas' submissions and the evidence as a whole, we conclude that the LEA's decision was wholly unreasonable and that its conduct in resisting the appeal was also wholly unreasonable.

4. We order Hertfordshire County Council to pay to Mr and Mrs F the sum of £1500 in respect of the costs and expenses incurred by them in connection with this appeal .

Signed

Chair: Mrs M A Richards