

Decision

Appeal no: 07-00083
Appeal by: Mrs G
Against Decision of: London Borough of Haringey
Concerning: T (born 25 July 1996)
Hearing Date: 21 May 2007
Tribunal Panel: Heather Vassie (Chairman)
Jill M Barraclough
David Williams

Appeal

Mrs G, supported by Mr G appeals under section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by London Borough of Haringey (LEA) in respect of their son T, known as T.

Attendance

Mr and Mrs G attended the hearing were represented by Mr D.Silas. Their witnesses were Ms B, independent educational psychologist, and Ms M, Headteacher of F School.

Ms J.Miller represented the LEA. The LEA's witness was Dr.L.

Preliminary matters

Mrs G asked the Tribunal to accept the following items of late evidence, which had been sent to the Tribunal at least five working days prior to the hearing:

- Report of Ms B dated 19 March 2007
- Report of visit by Ms B to F School dated 18 April 2007.
- Annual Review Report from F School dated 26 February 2007.
- Individual Education Plan review dated Spring 2007

Ms Miller had no objection to these documents being admitted as evidence and, as they complied with Regulation 33(2), we agreed to admit them.

Ms Miller told the Tribunal that she had sent the following documents to the Tribunal on 16 May 2007:

- OFSTED report of S School
- Report on the Ruth Miskin Literacy Scheme
- Amended statement
- Comments from the speech and language therapist and occupational therapist dated 22 February 2007 on how T's needs could be met.
- Amended statement

These documents had not been received by the Tribunal in order to comply with Regulation 33(2). We therefore considered them under Regulation 33(3) but did not consider that admitting the documents would comply with that Regulation and therefore did not agree to admit them, except for the OFSTED report which is a document in the public domain and the amended statement.

Mr Silas provided a Working Document, which was accepted by the Tribunal.

Facts

1. T is a ten year ten month old boy. He has complex special educational needs including severe receptive and expressive language difficulties and severe dyslexia or specific learning difficulty. T also has poor motor planning skills, reduced fine and gross motor skills, concentration difficulties, social communication difficulties and fragile self esteem.

2. T is the third of a family of four children who live with Mr and Mrs G. His older brother and sister now attend secondary school and his younger sister attends S Primary School. T is described as a boy with a bubbly and charming personality who is co-operative and slightly passive. He relates better to younger children. He is physically large and, because of his gross motor difficulties, often unintentionally knocks over other children.

3. T attended S Primary School, a voluntary aided primary school, from September 2000, when he entered the nursery, to December 2005. He has had a statement of special educational needs since October 2000. T's siblings attended S Primary School and his younger sister is still a pupil there, in Year 3. The school has a large proportion of high achieving pupils. T received considerable support. In spite of this, it appears that the staff at S School considered that while there, T made little progress in maths and none in literacy. When he was unsupported by a learning support assistant (LSA) he did little work. His behaviour was never a problem. Mr and Mrs G decided to move T to another school after Mrs G attended an Individual Education Plan (IEP) meeting in September 2005 where she was informed that T was very lonely and isolated. She was also told that T was sharing an LSA with a pupil whose needs were different from his, he sometimes had help for lessons such as PE when he really required help in literacy and maths. She was told that T was completely unable

to understand the lessons as they were presented to him. Mrs G was shocked to be told that the only occupational therapist in the area had left some time ago and had not been replaced.

4. Mrs G's enquiries led her to F School, an independent school for pupils with specific learning difficulties. Mr and Mrs G considered that F School could meet T's needs and he was offered a place there, which they accepted. He started attending the school in January 2006. Mrs G said that staff at S Primary School supported the move and this was confirmed to Ms B when she visited the school.

5. Ms M, the Headteacher of F School, told the Tribunal that T was one of the most complex pupils in the school. It was decided, when he started, that he should repeat Year 4 and he is now completing Year 5. Ms M did not expect T to acquire sufficient social maturity to return to his chronological year group in the near future. Although the expectation of the school is for pupils to return to mainstream education in two to three years, she considered that this would be unlikely for T who had extensive and complex difficulties with few compensatory skills. She hoped that he might be able to return to the mainstream by Year 9. T could stay at F School until the end of Key Stage 3. F School has 4.6 speech and language therapists and 3.6 occupational therapists working alongside teaching staff. T has five fifty minute sessions of maths each week in a group of 7 pupils. He has writing and reading in a group of three for thirty minutes five times a week each. He has speech and language therapy in a group of two twice a week for thirty minutes each session and occupational therapy in a group of five once a week for thirty minutes. He is making steady but not rapid progress. Mrs G said that T was much happier and was more motivated as he received recognition for his effort and progress.

6. Ms Miller accepted that F School could meet T's special educational needs but considered that placement there represented unreasonable use of the LEA's resources. The LEA considered that T should return to S School. He should now return in September 2007 when he should join the then Year 6. The main focus of his literacy provision would be the Ruth Miskin Literacy Scheme, which was being introduced throughout the LEA and had been introduced at S School in February 2007. The Headteacher of the school informed Ms B that T would have to join a Year 2 group in order to be at an appropriate level, even though he would be 11 years old. In addition, it was proposed that T would have one hour a week support from a teacher to assist the school in developing and implementing programmes. This would not be direct work with T. The amended statement provides for T to have twenty five hours a week support from an LSA, who would be overseen by the Special Educational Needs Co-ordinator (SENCO). The LSA would also be responsible for implementing programmes devised by the speech and language therapist and occupational therapist. Ms Miller told the Tribunal that the LEA contributed a sum of money annually for speech and language and occupational therapy services. She said

that two full time equivalent occupational therapists had now been appointed to work with pupils. The LEA agreed to amendments to the statement to provide for direct speech and language therapy of thirty to forty minutes a week with twenty minutes a week to develop and model activities to school staff. The amended statement also provided for direct occupational therapy in one block of six to eight weeks and followed up half termly. Sessions would be attended by T's LSA in order for training to be delivered for the delivery of a programme. The LEA would also provide five hours a week supervision by a school meals supervisor.

7. Ms B visited S Primary School on 18 April 2007. During that visit, the Headteacher, who had been due to attend the Tribunal hearing but did not come, expressed her frustration at the proposal for T to return to the school and appeared to consider that his needs could not be met there. Ms B, herself, was concerned about the use of the Ruth Miskin Literacy Programme as the main strategy for addressing T's literacy needs in view of his receptive and expressive language difficulties. She told the Tribunal that there was no research on the ability of the programme to assist pupils with difficulties such as T's. Staff at S Primary School have not been trained to support pupils with dyslexia.

8. Mr and Mrs G considered S Primary School to be an excellent school. They had been involved as parents for ten years and Mrs G was vice chair of the PTA. However, they did not believe that this school or any mainstream school could meet T's current special educational needs.

9. The cost of a place at F School are as follows:

Annual fees	£ 22,650
Transport costs	£ 2,100
Total	£ 24,750

The annual cost for a place at S Primary School is as follows:

Age weighted pupil unit	£ 2482.20
Teacher 1 hour pw	£ 1083.00
LSA 30 hours pw	£15038.40

Mr Silas argued, on behalf of Mr and Mrs G, that if T were to return to S Primary School he would require specialist teaching for an hour a day, in addition to the one hour a week to ensure that his work is appropriately differentiated and delivered as there is no specialist teacher at S Primary School. He also stated that there is evidence that T required two hours a week speech and language therapy and one hour a week occupational therapy for which the following additional costs would be payable:

Specialist teacher	£ 4343.00
Therapies (27ph)	£ 3078.00
Total	£26024.60

10. Mr Silas made an application for costs against the LEA in the sum of £2500 being a quarter of the total costs incurred by Mr and Mrs G to bring this appeal. He asked the Tribunal to order that the LEA pay these costs under Regulation 40(d) on the grounds that the disputed decision was wholly unreasonable. His reasons were that the LEA knew that T was failing at S Primary School. They were made aware that the placement had broken down and that T had moved to F School within a few weeks of the move but they did not arrange an Annual Review until May 2006, which was held at S Primary School even though T was no longer there. The LEA did not make any additional provision for T in spite of the fact that his needs were not being met. Further, Mr Silas had sent a working document to the LEA four weeks prior to the hearing but the LEA had taken no steps to try and agree any amendments before the hearing. They had, however, two days before the hearing, made an offer to Mr and Mrs G of contributory funding in the sum of £16,153.00 to March 2008.

Tribunal's conclusions with reasons

We carefully considered the evidence given at the Tribunal hearing as well as the written evidence sent to the Tribunal in advance and the late evidence admitted by the Tribunal.

We were assisted by the parties reaching a high degree of agreement as to amendments to the Statement which is evidenced by the document attached to this Decision and signed by Ms Miller and Mr Silas.

A. There was persuasive evidence that T was not making progress at the time he left S Primary School with the support that he was then receiving and that he was isolated and unhappy. The provision proposed by the LEA in the statement dated 10 November 2007, against which this appeal is brought, offered no additional provision.

B. The LEA originally proposed that T should return to S Primary School immediately and join the current Year 5 but during the course of the hearing conceded that it would be better if he waited until September 2007, when his peer group would have left. T would then join a group that he did not know. It was reported that the Headteacher of S Primary School was concerned that there were pupils in that group who would not accept T's differences as his own peer group had done. He would be in a year group only one year above his younger sister's and would be joining pupils in an Infant class for literacy. Given that T

was unhappy and isolated before he left the school, we were unable to accept that this arrangement could in any way meet his social and emotional needs.

C. In view of the complexity of T's needs and the fact that, if T were to return to S Primary School he would be transferring to secondary school a year later, we did not consider that reliance on the Ruth Miskin Literacy Programme to meet his literacy needs was appropriate. This programme is in its early stages in the school and there is no evidence that it is effective for pupils with T's difficulties.

D. It was apparent from the evidence from S Primary School that without significant support, T was unable to access the curriculum. T needs support by a trained LSA at lunchtime and playtime to help him with his social communication and gross motor difficulties.

E. In the absence of the Headteacher of S Primary School we accepted the account of her views of the ability of the school to meet T's needs were he to return to the school as reported by Ms B.

F. We were concerned about the uncertainty of provision of speech and language therapy and occupational therapy proposed by the LEA. We were not satisfied that this was provision to meet T's needs rather than provision which the therapists were willing to provide. We accepted the evidence of Ms Q, occupational therapist, and Ms H, speech and language therapist as well as the more recent assessments carried out at F School. We consider that T requires two hours of speech and language therapy and one hour of occupational therapy per week to address his identified needs in addition to programmes delivered throughout the school day.

G. We accept that T's needs are being met at F School. We have considered that it is the preference of Mr and Mrs G for T to attend this school. We have considered the comparative costs and note that the overall costs of provision at S Primary School is greater than the cost of provision at F School. We therefore conclude that placement at F School does not represent unreasonable use of resources.

H. We carefully considered the application for costs against the LEA. Whilst we consider that the LEA was dilatory in addressing this case, we were unable to conclude that their conduct amounted to being unreasonable and therefore do not make an order for costs

Order

The statement of T shall be amended as follows:

- i. In accordance with the agreed points in the Working Document attached to this Decision.
- ii. Paragraphs 5, 6 and 8 of Part 2 in the Working Document shall be incorporated into the statement.
- iii. Paragraph 10 of Part 2 of the Working Document shall not be incorporated into the statement.
- iv. Paragraphs 4 to 8 of Part 3 Provision in the Working document shall be amended to read: 'T needs a specialised educational environment with small classes and teachers who have expertise in teaching pupils with specific learning difficulties and speech and language difficulties. He needs to be taught in a school which uses a multidisciplinary approach incorporating speech and language therapy and occupational therapy in the classroom.' This shall be incorporated into T's statement.
- v. Paragraphs 11 and 12 of Part 3 Provision in the Working Document shall be incorporated in the statement.
- vi. Part 4 shall be amended to delete reference to S Primary School and to replace with:

A specialist day school catering for children with specific learning difficulties, namely F School.

Signed:

Heather Vassie (Chairman)