



Tribunals Service

Special Educational Needs
and Disability Tribunal

DECISION

Appeal No: 08-01022
Appeal by: Mr G and Mrs G
Against decision of: The London Borough of Southwark
Concerning : S G (born 16 February 1997)
Hearing Date: 1 July 2008
Tribunal Panel: Ms Simon Pearl (Chair)
Dr S Lorenz
Mrs G Copnall

Appeal

Mr and Mrs G appeal under Section 326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs made by The London Borough of Southwark ("LEA") in respect of their son, S.

Attendance

Mr D Silas, Solicitor represented Mr and Mrs G who attended. Their witnesses were Mrs R B, Educational Psychologist and Ms D F Speech and Language Therapist and Deputy Head of Therapy, SM School. Mr B, S's grandfather, attended as an observer.

Mr M Small, of the LEA'S Legal Department represented the LEA. The LEA's witness was Mr S E, Head Teacher, S School.

Preliminary Matters

Mr Silas applied to admit as late written evidence, a copy of a report by Ms J F, Speech and Language Therapist, dated 16 June 2008, and a copy of his letter to the LEA of 18 June 2008. These documents had been served on the Tribunal and the LEA over five days prior to the hearing, and we agreed to admit them pursuant to Regulation 33(2) of the Tribunal's Regulations.

Facts

1 S is currently in Year 6 and attends AS Primary School ("AS"), an LEA maintained mainstream school. He is due to transfer to secondary school in September 2008, S has a diagnosis of high functioning autistic spectrum disorder. This affects his communication, learning and social skills. S has a Statement of Special Educational Needs, which was amended by the LEA on 14 February 2008. Mr and Mrs G seek amendments to Parts 2, 3 and 4 of the Statement, During the course of the hearing, we were advised that the parties have agreed amendments to Part 2 in the terms set out in the Appendix in this

Decision. Furthermore, there were many agreements reached on amendments to Part 3, although other proposed amendments remained in dispute. The matters in dispute relate to the amount and nature of speech and language therapy ("SALT") and occupational therapy ("OT") along with the nature of the peer group that S should be educated with, and whether S requires a waking day curriculum. In respect of Part 4, the LEA has named the S School ("S") an LEA maintained special school. Mr and Mrs G seek an amendment to name SM School ("SM"), an independent special school.

2 Mr G told us that S is struggling with his self esteem at school. He has no friends and often apologises for not understanding. Mrs G added that in the early years at AS, S had friends but the gap socially has widened. His mainstream placement worked well until Year 3 and AS has continued to make great efforts to provide for S. In recent years, particularly in Year 6, it has become apparent that S is not able to learn in a mainstream environment. S's autistic traits such as self stimulatory behaviour are increasing and it is hard to motivate or focus him at all either at school or at home. S does not play with his younger brother, and spends his after school hours in his room watching DVD's.

Speech and Language Therapy

3 Ms S BU, Independent Speech and Language Therapist provided speech and language therapy to S on a weekly basis, at his parents' expense. In her report of 15 February 2006, she indicated that there are no concerns about S's speech sound system and that his understanding of language appeared broadly within the expected range for his age, but was significantly affected by S's attention and auditory processing skills. S had difficulties in focusing attention during structured activities and this significantly impacted on his ability to follow the language used. The weekly sessions ended in July 2006, and S has had no direct SALT since then.

4 S was assessed by an independent speech and language therapist, Ms J F, on 3 June 2008. Her report concluded that S has a moderate to severe social communications disorder involving a pragmatic language impairment, difficulties with social cognition, and language processing difficulties in the form of a severe receptive language disorder and a moderate to severe expressive language disorder. She recommended a direct speech and language therapy session each week to be delivered within school by a qualified therapist in combination with individual, small group, and classroom based therapy. She stressed the need for the SALT to be integrated across the school week and for the therapist to be involved in curriculum planning with S's teachers and involved in drawing up S's IEP.

5 Ms F told us that she conducted the speech and language assessment during S's visit to SM. She considered that S had the ability to learn but that it was crucial for a specialist therapist to be engaged daily in identifying and unpicking S's barriers to learning as his learning depends on his ability to engage and focus. She told us that the evidence from the assessment demonstrated that S's learning is fragmented. He had great difficulty in

connecting new learning with his existing knowledge base. Although there was a need for some individual work, it is essential, in Ms F' view, that there is also daily and ongoing input from the therapist to maximise S's learning opportunities.

6 Mr Small told us that the LEA broadly agreed with the recommendations of Ms F and that as additional SALT provision is needed, over and above that already available at S, the LEA would make the appropriate supplementary provision. Mr E told us that there were two therapists available for a total of 3 days per week at S. Their main focus is on Year 7 pupils and on pupils with identified specific needs further up the school. Mr Small told us that the LEA would enhance the S provision to make available a therapist for seven hours per week for S representing two hours of direct therapy and five hours for planning S's IEP, and ensuring S accesses his learning in class as recommended by Ms F.

Occupational Therapy

7 Ms J M, independent occupational therapist, assessed S on 6 May 2008. She concluded that S has a severe sensory processing disorder, and motor coordination and visual perceptual deficits. Both S's fine and gross motor skills scored on the first percentile on a standardised assessment, Ms M made a series of recommendations for OT intervention including direct sessions with a qualified therapist of not less than 30 minutes per week, the development and implementation of a sensory diet to assist S to reduce his inappropriate sensory seeking behaviour within the classroom and the provision of treatment programmes including brain gym exercises to develop bilateral integration and to develop core trunk stability and improve gross motor skills.

8 The OT assessment carried out at SM also identified S's sensory processing, gross and fine motor skills deficits along with his visual motor and perceptual difficulties and proposed interventions. These recommendations were incorporated into the proposed amendments sought by Mr and Mrs G. Ms F told us that it was apparent that S's learning was very dependent upon his alertness levels and therefore a sensory diet was essential and required frequent monitoring by a qualified therapist.

9 Mr E told us that there was no OT support; for pupils at S. Mr Small confirmed that the LEA would arrange for OT support to be provided through the Primary Care Trust. He referred to the fact that the therapist who had worked with S in the past, Ms C had reported that due to S's reduced ability to engage in sessions, direct therapy had to be discontinued. Ms G told us that this was because S was taken to her sessions each week which were not integrated into the school day, and S had stopped to benefit from them. Mr Small indicated that the LEA accepted the need for direct intervention and were prepared to agree to provide the provision recommended by Ms M, but did not think it appropriate to agree SM recommendations.

Appropriate Peer Group

10 Mrs B, Independent Educational Psychologist, assessed S on 12 March 2008. She told us that cognitively S was on the moderate learning difficult (MLD) range although some of his scores were at the lower end of the mainstream school population. She regarded it as vital to S's learning that he is in a class with pupils of similar cognitive abilities and in particular with pupils who are mainly oral. She did not consider that it was appropriate for S to be in a class of autistic children where there would be little socialisation. Mrs B told us that although there was some discrepancy in the attainment levels recorded from various assessments, S's national curriculum levels are in the main at level 2a although he has a level 3c in science on teacher assessment. She did not consider it appropriate for S to be in a class with pupils who were mainly working at P levels. His peer group needs to be able to provide S with good role models. She pointed out that until recently, S had been successfully placed in a mainstream school and benefited from it. She thought that there was a risk of S's anxiety increasing if he was in a class setting where he was getting no feedback or where there was a lot of unpredictable behaviour. Mrs B emphasised the risk to S's self esteem if he is in a class with mainly non verbal pupils or with pupils who do not have the social ability to engage.

11 Mrs G told us that S found mixing with autistic children difficult. Although he was autistic, he had shown that he had a lot of empathy with others. She had taken him to a gym club in the past and Mr G had taken him to a yoga club, where most of the other children were autistic and S disliked the unpredictability and outbursts of the other children. At AS, S's anxiety levels have been due to the level of work, rather than the other children. Although S finds mainstream pupils difficult to interact with, he is not distressed by being with mainstream children. He seems happiest in a small supportive group.

12 Ms F told us that S appeared quite isolated during the SM assessment and he did not initiate any social interaction with peers. She stressed that S had an extremely slow word processing skill and needed time to respond. This might give the impression to others that S was not interested in responding at all.

Waking Day Curriculum

13 Mrs B told us that due to S's fragmented learning he needed to develop his social skills and how to generalise these to develop independence. He needed an extended day curriculum, and the time and structure of such a curriculum to work on these. This is particularly the case given that S does get very tired. This will give him the opportunity of maximising his potential. Miss F told us that she regarded the after school curriculum as essential to S being able to use his learned knowledge in a functional way. She confirmed that SM do have pupils who attend on a daily basis but in her view, the waking day curriculum is needed for S, with the planned provision as set out within the SM's assessment report.

14 Mr Small indicated that the LEA regarded there to be no educational need for a waking day curriculum and also pointed out that Mr and Mrs G have not

sought any support from social services in the past. Additional support could be provided following a referral to them and that this could provide a variety of leisure and life skill programmes.

S School

15 S is a school for pupils with a diagnosis of autism or Aspergers syndrome. There are 92 pupils on roll between the ages of 11 and 19. In addition to autism, most pupils have associated speech and language, learning, behavioural and social communication needs.

16 In Year 7, in September 2008, there will be ten pupils, including the place for S. Of those pupils, five are performing at national curriculum P levels, three at level 1 and two (including S) at level 2. All are autistic. Five are non-verbal, two verbal but supported with PECS, and three fully verbal (Including S). The pupils have individual learning programmes to meet their needs and the pace of learning is determined by those needs.

17 Mrs B has visited S and considered that S's social needs will be restricted by the population at S not only within his own class, but also generally in all school events and in the playground because around 60% of the pupil population are operating below level 1. She was concerned that S would not provide S with the appropriate peer group and role models. She was also concerned that the integration of therapy support would be difficult to achieve at S particularly as the majority of the other pupils would not receive OT and SALT interventions at anywhere near the level being provided to S, Regarding a social skills programme, S would not be able to meet S's needs, in her professional opinion.

18 Mr E told us that although S has not been assessed at S, but based on the reports, he considered S would have a similar cognitive ability and range of special educational needs as many pupils at S. S's needs for socialisation would be supported. He accepted that autistic children needed to be encouraged to interact during playtime and S made conscious efforts to encourage this. In his view S would have a small peer group of pupils at the same cognitive level, who were verbal within this class. Mr E told us that there were after school clubs three days a week up to 5.00 p.m. and also lunchtime clubs. The emphasis of the school was in developing life skills which is part of the PHSE programme. All individual pupils had PHSE targets, Mr E considered that S would be able to meet S's needs subject to the additional provision of support of OT and SALT.

SM

19 SM is an independent special school for pupils with speech language and social communication difficulties. Many of the pupils have MLD and some are on the autistic spectrum. SM is approved by the Department of Children Schools and Families for children between aged 7 -19 with complex needs, A place has been offered by the School for S in September 2008.

20 Miss F told us that if he attended, S would be placed in a class of nine pupil with a range of communication difficulties. In broad terms, three of the pupils are working at NC level 1 or 2 and the others at high P levels, the lowest being P7/P8. Seven of the pupils are oral.

21 Mrs B told us that she considered SM would offer a more appropriate peer group for S than S and that SM could meet S's needs. Although the national curriculum attainments of many pupils at SM were similar to S, there was a significant difference of a class of verbal pupils and non verbal pupils for S's self image, and from a social point of view. Ms F told us that only one of the pupils in the class is on the autistic spectrum, and the pupils have good social abilities and are able to engage with each other and would provide good role models for S.

Tribunal's Conclusions with Reasons

We have carefully considered the written evidence submitted to the Tribunal and the evidence given to us at the hearing. We take 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) We accept and Order the agreed amendments to Part 2 as appear in the Appendix.

(B) We also accept and Order the amendments to Part 3 that were agreed as appear in the Appendix.

Speech and Language Therapy

(C) Mr Small confirmed that the LEA broadly accepted the recommendations of Ms F as to the SALT interventions that S requires to meet his needs. The issue that we have to determine principally relates to whether the SALT should be provided in the integrated manner proposed by Mr and Mrs G with therapists working with staff at school throughout the day, Mr Small contended that Ms F's recommendation could be implemented by providing seven hours per week of time from a therapist supplied by the LEA but did not outline how this time would be utilised, other than the direct therapy sessions and in the most general terms. It is not clear how such time could be utilised effectively on a daily basis. We accept the evidence from Ms F, which has not been disputed by the LEA with any expert evidence, that because S's learning was fragmented and that he had great difficulties in connecting new information learned to his existing knowledge base, a specialist therapist needed to be in class frequently to identify and unpick S's barriers to learning. Accordingly, we have concluded that the SALT provision has to be provided on a daily basis and the therapist involved in the class setting and curriculum planning with the teachers. We do not consider the therapist necessarily needs to be a member of the school staff however and therefore have made consequential amendments to the proposed wording of part 3 to reflect our

conclusions on this and the Waking Day Curriculum.

Occupational Therapy

(D) The LEA have not produced any expert evidence for this hearing. Mr Small indicated that the LEA accepted the need for direct intervention and agreed to the recommendations set out in Ms M's report. It was recognised by Mr Small that Ms M's recommendations were more extensive, and involved a greater direct work with therapists, than those sought by Mr and Mrs G which are based on the SM assessment. Mr Small's objections to the proposed amendments were principally because they were emanating from SM, rather than any specific criticisms of the recommendations. Mr Silas indicated that Mr and Mrs G were content to accept the provision as recommended by Ms M, or a combination of both proposals. We consider that the recommendations of SM's, with the exceptions as referred to below would meet S's needs. We have taken account of Ms F' view that S's learning is dependent upon his alertness levels and that therefore the specialist occupational therapist needed to monitor this throughout the school week and provide modification proposals. A number of SM's recommendations related to further assessments and the conducting of a full sensory profile. We have concluded that these should not be set out in Part 3, noting that Ms M does not make such recommendations but no doubt the therapist will address S's seating and desk position.

Peer Group

(E) S is autistic and has moderate learning difficulties. He communicates verbally and has demonstrated an ability to learn at NC level 2a, and on a recent teacher assessment achieved a level 3c in science. He is socially isolated, and his social skills need development through peer interaction. We accept Ms B's view that S would not benefit from being with non verbal peers or with pupils who are unable to initiate social interaction due to autism. We accept Mrs G's evidence that S shows signs of distress when with children whose behaviour is unpredictable. Ideally S should be educated with children at his cognitive ability who are verbally and socially able.

Waking Day Curriculum

(F) We take note of Ms B's and Ms F' views, supported by the report of Ms F, that S requires a waking day curriculum in order to be able to generalise his learning and life skills. Clearly, he does need to develop these skills. However we are not satisfied that such generalisation could only be achieved through programmes after the school day. Whilst we acknowledge that a waking day curriculum would provide extra opportunities for such development, we accept the evidence of Mr E that these skills are at the core of what can be provided by a special school catering for children with autism and MLD and such a school can make appropriate provision in this area. Accordingly we do not order the provision of a waking day curriculum be set out in Part 3.

Part 4

(G) Mr Silas accepts that the cost differential between the two schools is such that if we were to decide that S was able to make the appropriate provision, then it would be inefficient use of the LEA's resources to name SM in Part 4. Mr Small, in the LEA's Case Statement, concedes that SM can meet S's needs and make the appropriate provision. Although various reservations were raised in the case statement and the hearing, the LEA did not resile from this position. Accordingly, the question is whether S can meet S's needs.

(H) We refer to our conclusions that the SALT and OT provision for S should be provided dally in class with both specialist therapists being involved In curriculum planning and In drawing up S's IEP in consultation with his teachers and parents. Mr E accepts that S's own resources could not meet the requirements for specialist therapists in either discipline to work in this fashion. In recognition of this, Mr Small indicates that the LEA will supplement S's resources. However, we are not satisfied that professional consideration has been given as to how this could be achieved in practice. In particular, we are concerned how the integration of the therapies into the classroom situation and the frequent monitoring can take place with an LEA employed therapists. Given the fragmentation of S's learning and the need to keep him focused has been demonstrated during the SM assessment, we do not consider that the LEA's proposals in relation to OT and SALT will meet S's needs. Additionally, although we accept that there will be few pupils in the year 7 class at S with broadly similar cognitive ability, and who are verbal, the majority of the class is non verbal, and working at P levels and all of the pupils are autistic. We accept Ms B's views that S will not benefit from being in such a class. Mr E readily admitted that autistic children require encouragement to socially interact and do not naturally do so spontaneously. We conclude that the peer group at S would not be appropriate for S.

(I) Accordingly, we have concluded that S is unable to make the appropriate provision to meet S's needs. We therefore Order that Part 4 be amended to name SM. Although the waking day provision is not ordered as we have concluded that appropriate provision could be made without a waking day curriculum, given the distance from home, S will need a residential place at SM.

Order

1. The LEA should amend Part 2 and Part 3 of S's Statement as set out In the Appendix to this Decision.
2. Part 4 of S G's Statement to be amended as follows "SMs Children Trust School, Bexhill-on-Sea" (an independent special school).

Date 10 July 2008

Signed \ ^
Chairman : Mr Simon Pearl



