

Decision

Appeal By: Mr & Mrs M
Against Decision of: Hertfordshire County Council
Concerning: T
Hearing Date: 25 January 2011
Tribunal Panel: Mr Tony Askham (Tribunal Judge)
Mr Ken Chapman
Mrs Helen Cook

Appeal

Mr. and Mrs. M appeal under Section 326 of the Education Act 1996 against the contents of a Statement of special educational needs made by the Hertfordshire County Council (LA) concerning their daughter T.

Attendance

For the parents

Douglas Silas	Solicitor - representative
Mr. and Mrs. M.	Parents
RB	Educational Psychologist
JF	Speech and language therapist

For the Local Authority

Mark Small	Solicitor- representative
Mrs. W	Head teacher B School
HH	Speech and Language therapist
MS	Educational psychologist

Preliminary matters:

1. Despite this case having been adjourned in December little progress had been made in reaching agreement on Parts 2 and 3 of the Statement and as a result there were a substantial number of issues which we set out below for the Tribunal to hear evidence on and resolve.
2. In areas where there was agreement the parties were content to reflect that agreement in an updated working document and deliver it to the Tribunal by 5 pm on Friday the 29 January 2011. That agreed working document is attached to this decision.
3. We admitted late evidence concerning H School, the school now argued by the parents to be named in Part 4 and a letter and accompanying report from Dr G, a clinical

psychologist at Hertfordshire community NHS Trust. Both parties agreed the documents were an essential part of the issues to be decided by us and that we should admit them.

The issues

4. The working document and the discussion with the representatives showed that the following issues needed to be decided by us.

In Part 2

5. Is it right to say that T's learning is affected by her interaction with her peers and other adults?

6. Does a description of the strategy used by the school to get T on task need to be included?

7. Is it correct to identify the fact that T appears happy did not mean that she was and is this part of her medical condition?

8. Does T have 'temper tantrums'?

9. Is it right to say that T is a "very effective communicator of how she feels by non verbal means"?

In Part 3

10. Should the provision for speech and language "focus on developing her oral motor skills"?

11. Does T need intensive use of PECs across the whole school day?

12. Should the level of Speech and language therapist involvement be 45 minutes a week as argued for by the parents or 90 minutes a month suggested by the LA?

13. Does T need to be assessed by an AAC expert to see if there is a communication aid appropriate to her?

14. Does T need a high level of adult 1:1 support?

15. Does T need short bursts of individual work away from the whole class?

16. Does T need a behaviour management programme, which operates across school, home and respite care provision?

17. Is it right to describe her behaviour as "challenging?"

18. Does she need only a small number of people working with her?

19. Does she need a waking day curriculum?

20. Does T need weekly hydrotherapy/swimming?

21. Does she need a school where she can participate in physical activity after school hours?

22. Does she require an educational physiotherapy provision to the type and extent argued for by the parents?

Part 4

23. Should Part 4 of the statement provide for a specialist post 16 placement providing residential placement and a waking day curriculum?

24. Is B School, the school T currently attends, (B), meeting and able to meet in the future T's special educational needs?

25. Can H School meet T's needs and be named in Part 4?

The evidence

Parental evidence

26. We first heard evidence from T's parents. T suffers from Angelman Syndrome (AS) a rare chromosomal disorder that affects the nervous system and manifests itself as global developmental delay associated with learning, speech and language, fine and gross motor and behavioural difficulties. They told us of the difficulties they experienced with her in taking her out and her problems with walking over uneven ground.

27. As a result of the issues with her behaviour the family has, over the years, become increasingly reluctant to take her out into the community. They told us of how her inability to understand social norms can result in difficult situations in public places and how, when anxious or angry she will rip her clothes. They told us she had temper tantrums. They considered that much of this behaviour stemmed from her frustrations because of her inability to communicate. They told us that she liked to watch a film and eat. She enjoys cooking. They described her as sociable.

28. T attends WD a LA facility for respite care for 48 nights a year and the family also receive direct payments which they use for carers for T at home. They told us that they believed that T needed a consistent approach across school, home and respite provision to enable her to behave appropriately. They considered that her current school B did not use consistent approaches and as a result 3 separate management programmes were in place. In addition they believed that T needs an intensive input over the final period of her education. She was still capable of learning. With this there would be opportunity for improvement for instance in the area of incontinence at night, her communication skills and her life skills.

29. Whilst they accepted that she would never be independent her quality of life could be improved by such input and her behaviour could also improve. As a result they maintained that a placement at a residential specialist school was required. They had seen a number of schools and they wished T to attend H. They were concerned that T had regressed in some skill areas and was not as happy as in the past and is unfulfilled.

Evidence from the school

30. We then heard from Mrs. W, the head teacher at B. The school is an LA maintained special school for pupils with severe learning difficulties aged 2-19. The school had been converted from a former infant school and it now had a hydrotherapy pool, sports hall and grounds, which included a sensory garden and an adventure playground.

31. She told us that T is now in the Post 16 school where the curriculum focuses on independence, literacy and numeracy. In addition to attending the school pupils attend a local FE College for one day a week and are also able to practice life/independence skills at a four bed roomed house owned by the college some 7-8 miles away for one day a week. T is in a group of 15 students working in two class rooms. The group has 2.06 teachers and 6 support staff. The hours of the school are from 9- 3.30 Monday to Friday.

32. Mrs. W told us that so far as evidence of progress is concerned she considered that T was more mature and confident and her behaviour more socially acceptable. She had acquired some life skills. It was not possible to show progress academically and she accepted that her communication skills might have declined. She said that T's behaviour could be variable. Some days she seems to want to learn other days she does not. She has in the past put things up her nose and still on occasions will tear her clothes. Usually the staff can persuade her out of her behaviour and in her view stress is the main cause of her difficulties. She saw no evidence of frustration.

33. She described her as generally happy and very social. She enjoys being with the staff and pupils. The school's main strategy to deal with T's unacceptable behaviour was distraction. By modeling what they required T to do and starting the task staff could usually get her back on track. The school did not now consider behaviour an issue and there was no IEP target for it.

34. She commented upon the findings of Dr G and his team who following a full assessment had concluded that T did not present with current significant challenging behaviours within the definition of the service. They had found that although the school, respite and home used different strategies to deal with T's behaviour these are effective in the context in which they were used.

35. She told us that T is highly distractible and does enjoy challenging people. Because the school's strategies worked it did not consider it needed a behaviour plan to deal with T as her behavior was not serious, and was not a threat to herself or others.

36. She considered that the school could meet T's needs in the school day and she could have a good life after her schooling without attending a residential school now. Whilst she could see that there may be some educational benefit to a residential placement Mrs. W felt that there was no requirement for it.

Speech and language therapy evidence

37. We had two speech and language therapists before us. HH from the local NHS trust and JF an independent therapist, who had been commissioned by the parents to assess T and give evidence to us. We had two written reports from JF and a report from HH being her assessment of T's needs for the statementing process. In reality there were few material differences between them on either their assessments or on the objectives to be

pursued. However there were the specific detailed issues in the statement which we have identified above.

38. The first of these issues to be addressed was in relation to T's use of PECs. HH reminded us that all the issues, including her ability to communicate, needed to be considered in the context of T's functional level of 1-2 years. As to PECS use across the whole school day she considered that T required a mixture of objects, pictures and symbols and did not favour the usage of the word "PECs" as this was merely a commercial product.

39. JF argued that T had used PECs efficiently at her previous school and the system was a useful one. Her concern was that T's ability had declined. It was essential that she had an effective communication system before she leaves school. To achieve this she needs intensive work from a speech and language therapist. Her father gave examples of T's ability to make choices and why these showed she was still capable of learning.

40. Both then dealt with the issue of oral muscular deficiencies. HH pointed out that the importance was the ability to swallow safely and adequately. Whilst her oral skills might be immature for age she pointed to evidence which clearly described T eating and drinking effectively. She pointed to the report from the therapist at H who did not point to this being an issue. JF however disagreed. She said that there was potential that by improving her oral muscular control T may be able to make some sounds and also eliminate her drooling to make her more socially acceptable. Her mother said that T was much less prepared to eat meat and other food which required chewing as compare with the past.

41. Both then gave evidence of the amount of therapy which was required. HH said she preferred a flexible model rather than being tied to a specific amount of therapy each week. She would be in class each week. She thought that direct 1:1 therapy was unlikely to be successful because of the difficulties in the skills learnt being generalised. As a result her strategy was to work with school staff and families. She accepted that T's expressive language had not progressed. Her service had discharged T in 2007 as they considered she had plateaued. She maintained that 90 minutes involvement per month was sufficient to achieve the objectives set out in the statement.

42. JF however maintained that while accepting the concerns as to the generalising of skills there was a need for direct 1:1 therapy concentrating on getting a base line on PECs and putting in place the use of augmentative aids once the line had been established. To achieve this and ensure progress was made in the classroom a minimum of 45 minutes would be required weekly. T needed to be introduced again to skills and over learn them and practice them continually. She has to end up with some means of functional communication. She also needed work done to develop her social communication skills. There were many areas where the therapist would need to be involved and hence the time recommended.

43. HH and Ms W told us that assessment of Augmented communication aids has been undertaken in the past and none had delivered a suitable solution for T.

Occupational therapy and physiotherapy evidence

44. There was no oral evidence before us. Both representatives took us to the written evidence and the written reports on physiotherapy. The first of these reports was one

from JM, a paediatric occupational therapist, who was retained by the parents to assess T and advise. There was also available to us a report from GS a children's occupational therapist employed by the Health authority who advised that the recommendations and advice as outlined in JM's advice were appropriate to meet T's needs. As a result there was no disagreement on these and the statement reflected this.

45. As to physiotherapy issues here there was dispute but the only evidence was a report by SW, a chartered Physiotherapist, who was instructed to assess T and report by her parents. Her report had three disputed elements. First she argued that T needed a school with a waking day curriculum where the consistency of adult support would be more likely to ensure her participation in regular physical activities. Secondly she advised that she needed weekly hydro therapy/ swimming and thirdly she identified the amount of therapy time required by the therapist to assess, provide and monitor a class based programme, provide input into a programme of physical education, monitor equipment, attend the annual review, contribute to an IEP, and liaise with parents and fellow professionals.

46. We deal with the first issue when dealing with the need for a waking day curriculum below. As to the second Ms W said T did not currently use the school hydro therapy pool as there was insufficient time in the week for this to be included in the curriculum. As to the third the LA maintained that much of these matters could be dealt with by an occupational therapist.

Educational psychologists' evidence

47. We heard evidence from both MS, an educational psychologist employed by the LA and from RB an independent educational psychologist retained by the parents. We had two reports from RB and a report from MS. Both addressed the outstanding issues in parts 2 and 3.

48. As to the need to specify the need for 1:1 support the LA accepted that T needs a high adult/ pupil ratio, it was argued for the parents that all her activities had to be moderated through an adult so it was logical to make that clear. The LA pointed out that this wording arose from the H assessment and meant that additional fees would be charged if T attended there.

49. Similarly the LA argued that the only reason for the disputed provisions as to withdrawal came from the H assessment. Indeed Ms W told us T was hardly ever withdrawn in this way at B.

50. The next area of professional disagreement was the issue of behaviour management. RB pointed out she was the only professional to have carried out an adaptive behaviour assessment. The results from the teacher form clearly showed that she was in the clinically significant population and that problem behaviours were interfering with her adaptive behaviours, which clearly indicated that the significant emotional disturbance occurs. As a result she said there clearly needed to be a behaviour plan which identified the function, range and trigger of these behaviours. The behaviours were long standing, and clinically significant and occurred across all settings. Once this work was done a behaviour strategy, which can be put in place across school, home and respite, needs to be designed and implemented.

51. MS said that the school's approach clearly worked and she felt the provision in the statement was sufficient and additions of this sort were unnecessary.

52. RB then dealt with wider issues. T did not have a visual timetable, and no communication plan and no visual schedules were used at B. She felt that the school was not giving her the skills she needed to live as independently as possible. MS argued that trying to skill T up using PECS ran the risk that she would lose motivation and it was the practical living skills that should be focused on.

53. Finally both spoke about the issue of whether there was a need for an extended day curriculum. RB said the main reasons were: the need for consistency in behaviour management, and communication. The need for the skills learnt to be generalised across the waking day. Developing functional skills across all environments. As importantly she pointed out that there was now only a short period left for T to be educated and thus there had to be created sufficient time to provide her the intense help that was required.

54. She pointed out that each of the independent advisors had separately advised on the need for an extended day curriculum as had the consultant paediatrician.

55. The LA's response was that T's educational needs were being met at B and her respite needs were also being met. MS supported that position.

Costs of the provision

56. We had written evidence as to costs. Total public expenditure on T's existing package including respite care is some £52,968 per annum. The costs of placement at H for 46 weeks boarding will exceed £158,000.

The Law

57. We have taken into account the Code of Practice (in particular Paragraph 8.74) the DFES Guidance 0774/2001, the relevant sections of the Education Act 1996 as well as the case law which includes:-

London Borough of Bromley v Special Educational Needs Tribunal and Others [1999] ELR 260; S –v- The City and Council Swansea [2000] ELR 315; Oxfordshire County Council v GB and ors [2001] EWCA Civ 1358, [2002] ELR 8; R (Tottmann) –v- Hertfordshire County Council 2003; W V Leeds City Council and the Special Educational Needs and Disability Tribunal [2005] EWCA Civ988; R (A) v Hertfordshire County Council [2006] EWHC 3428 (Admin), [2007] ELR 95; The Learning Trust v SENDIST and MP [2007] EWHC 1634 (Admin), [2007] ELR 658; R (M) v Wiltshire CC and SENDIST [2006] EWHC 3337 (Admin) [2007] ELR 171; S v Solihull MBC [2007] EWHC 1139; Bedfordshire County Council v Haslam and others [2008] EWHC 1070 (Admin),; TS v Bowen & Solihull MBC [2009] EWHC 5 (Admin); H v E Sussex County Council [2009] EWCA Civ 249; Hampshire County Council v R & SENDIST [2009] EWHC 626 (Admin).

Tribunal's conclusions with reasons

58. We deal first with the issues in **Part 2** which were left for us to decide.

Is it right to say that T's learning is affected by her interaction with her peers and other adults?

59. On this matter we do not think that the evidence supports this statement. We have deleted it from the statement

Does a description of the strategy used to get T on task need to be included?

60. We think that this is unnecessary because it is clear that different strategies are used at home, school and respite and all are described by behavioural experts as effective. Given our findings on the need for behaviour management below we do not intend to include it and will delete it.

Is it correct to identify the fact that the fact that T appears happy did not mean that she was as this part of her medical condition?

61. Given how rare the condition is we think that identifying this is important to a reader of the statement who has not known T previously. We have amended the wording to make clear that it explains one of the symptoms of the condition from which she suffers. The issue is in our view important given her parents' evidence that in their view T is less happy and content than in the past.

Does T have 'temper tantrums'?

62. It is clear that on occasions T exhibits unacceptable behaviours but the evidence does not appear to suggest that these amount to "temper tantrums". It appears to us that the dispute as to this stems from a disagreement as to the wording to be used to describe her behaviour rather than from a disagreement as to how she behaves. We have varied the language in this paragraph to clarify the situation.

Is it right to say that T is a "very effective communicator of how she feels by non verbal means"?

63. This issue is in our view a very important one. Here there is some factual conflict. We were struck by part of T's mother's evidence as to an incident when she had failed to understand that T wished to have her pyjama bottoms on but could not express this to her mother and became upset. Ultimately she was able to get across her wishes but only because she could physically get the bottoms herself.

64. It is clear from the evidence both from the school and the speech and language therapists that T's expressive language has stalled and most probably declined. Whilst she might be able to communicate effectively if she can actually see or touch an object we find it is an exaggeration to say she is an effective communicator. Indeed her inability to effectively use PECS or any other symbol system suggests to us that JF's concerns as to this issue are well borne out.

65. As a result we have removed this phrase from the statement and replaced it with what on the professional evidence appears to be a fair reflection of her expressive communication abilities.

66. Dealing then with **the issues in Part 3**

Should the provision for speech and language "focus on developing her oral motor skills"?

67. As is apparent there is a professional disagreement on this issue. To an extent it is one of degree. It is accepted by HH that T's skills in this respect are immature. We note that the speech and language therapist at H did not raise the issue as one of concern. JF explained her views persuasively and wants to see if by so concentrating it might be possible to get T to verbalise a little. On balance we think it would be wrong to provide that the provision should "focus on" this problem.

68. As we explain below we believe that it is vital that efforts are concentrated on teaching T to be as an effective expressive communicator as possible. This might involve some increase in her ability to vocalise but primarily will concentrate on pictures and symbols.

Does T need an intensive use of PECs across the whole school day?

69. The answer to this issue stems from our views expressed immediately above. For T to have as fulfilled life as possible being able to communicate with those who will care for her in adult life and the peers she is with is vital. We have deep concerns as to how her ability to use pictures and symbols has declined over the last few years. We find it is essential that every effort is made to get T to a stage where she has a functional ability to express herself. Whilst we do not stipulate the scheme used needs to be PECs it must be one which can be taken forward into adult life by her. We have so provided in the statement.

Should the level of Speech and language therapist involvement be 45 minutes a week as argued for by the parents or 90 minutes a month suggested by the LA?

70. Given our concerns on her current abilities to communicate we find that JF's views as to the amount of input are to be preferred to those of HH but we agree that given the complexity of T's condition and the progress which must be made allowing flexibility of how the therapist spends her time is important. We have reflected this in our redrafting of the provision.

Does T need to be assessed by an AAC expert to see if there is a communication aid appropriate to her?

71. Again for the same reasons set out above any opportunities which may be available to aid T's ability to communicate must be explored. We accept that the school and LA have explored this before but the constant availability of new technologies means this must be kept under regular review. An assessment should be carried out within the next 3 months and we have so ordered.

Does T need a high level of adult 1:1 support?

72. We understand the LA's concerns as to the wording in dispute. Of course T will always need a high adult / pupil ratio in a learning environment. On many occasions she will need 1:1 support for instance when receiving her individualised speech and language, occupational and physiotherapy programmes. She will require individual support to keep her on task or get her back on task. However she does not need 1:1 support for each hour of the school day. This is quite apparent from the school evidence and indeed the evidence of the behaviour service.

73. . As a result we have amended the provision to make the position comply with these findings.

Does T need short bursts of individual work away from the whole class?

74. There is no evidence to support this view. B have never felt the need to do this and again the behaviour team did not comment on the need for this. Clearly given the range of therapies and programmes the statement shows will be delivered to T individually, she will be withdrawn from the class frequently.

75. As a result we can see no reason for H to have reached this conclusion based entirely on its assessment of T.

Does T need a behaviour management programme, which operates across school, home and respite care provision?

Is it right to describe her behaviours as "challenging?"

76. We take these two issues together because they both relate to her behavioural issues. Clearly T can exhibit some difficult and socially unacceptable behaviours when she is stressed and it may also be the case when she is frustrated. It is clear that the behaviour team using its own clinical definition do not consider the behaviours "challenging". On the other hand we accept that in RB's assessment, which has not been challenged, that T's behaviours are clinically significant.

77. As importantly we accept RB's important conclusions that there appears to be no real understanding of either the function, range or trigger for these behaviours. Her view with which we concur is that the objective must be to ensure that T's symptoms can be managed across all environments.

78. We find that the school does successfully manage the behaviours at school. The evidence of the school, MS and the behaviour management team is clear about that. However this is not generalised across all settings and clearly at home and when out in the community that is not always the case. We accept RB's views that there needs to be a clear aim to understand the function, range and triggers for her behaviours and strategies devised to address them. We have amended the wording of each of the behaviour provisions to comply with these views.

Does T need weekly hydrotherapy/swimming?

Does she need a school were she can participate in physical activity after school hours?

Does she require an educational physiotherapy provision to the type and extent argued for by the parents

79. We deal with the three physiotherapy issues together. The LA does not seek to suggest that the physiotherapy needs of T are not educational and has no evidence to contradict the clear advice and written evidence of Ms Wright on the T's physiotherapy needs. As such we find these must be included in the statement.

Does she need only a small number of people working with her?

Does she need a waking day curriculum?

80. These two issues are interlinked so we deal with them together. In reality they go to the real issue in this case. They require us to properly examine a range of factual and legal issues which we have rehearsed both above under the heading of " the issues" and " the law". So we are clear about this in reaching our conclusion on this key issue we have dealt with this by answering the following questions:

Are T's' needs as identified by JF, and the other therapist engaged by her parents special educational needs as they argue?

81. We start by saying that in our view, T requires a holistic approach to both her educational and social needs. In saying that, we recognise, of course, that our powers are limited to the areas of responsibility given to the Tribunal by the Education Act 1996 and the consequential regulation. As was observed by Wall LJ in the case of W –v- Leeds City Council a delicate line must be trodden between examining the full picture of T's needs, limiting our decision to a careful assessment of her special educational needs within that full picture and then deciding what is appropriate to meet those particular needs. That is apparent from Wall LJ observations that the child in question was "*manifestly a child with multiple needs who poses enormous challenges for those who have to attempt to care for him and provide him with education*". He stated that "*Such a child's special educational needs simply cannot be viewed in isolation; nor can his s 17 [of the Children Act 1989] needs; nor for that matter can his need for services provided by the health authority and CAMHS. A holistic approach is necessary, and inter-agency co-operation essential, particularly since two of the bodies with statutory responsibilities... (the LEA and social services department) are part of the same local authority.*"

Wall LJ's decision therefore clearly recognised the very considerable importance of `viewing the needs of each child holistically and as a human being whose own life is not neatly divisible into separate compartments.

82. We have also reminded ourselves that our task does not include identifying what might be optimum or ideal provision for the full range of T's' educational and other needs. Nevertheless, despite the statutory limitations, the determination of where the line should be drawn between her educational and non educational needs is not on the face of it, a straight forward matter given the very considerable impact of and overlaps with educational needs described separately as behavioural, medical, social or care.

83. We noted that education is not defined in the education legislation, although its ordinary dictionary meaning is given as "systematic instruction, schooling or training given to the young in preparation for life". Section 351(1) of the Education Act 1996 says the curriculum for a school satisfies statutory requirements if, amongst other things, it prepares pupils at the school for the opportunities, responsibilities and experiences of adult life.

84. In the leading case the London Borough of Bromley –v- SENDIST and Others [1999] ELR 260, the Court of Appeal held that where the capacity of a child is severely limited, the purpose of education can include the development of daily living skills and the maximising control over a child's own environment. The Court held that special educational provision must be directly related to the child's learning difficulties but "there is between an unequivocally educational and unequivocally non educational a shared territory of provision which can be intelligibly allocated to either". The Court further held that provision for educational need is what is reasonably required and only those needs that are deemed to be educational must appear in Part 3 of the Statement.

85. It has been held in S v Solihull MBC and other that the inability of a child with ASD to generalise or translate into his home and other areas of his life and functioning what he was taught at school is an educational need. In our judgment that applies equally to T.

86. Section 322 of the Education Act allows a Local Authority to enlist the help of other bodies, such as Health and Social Services, in the making of special educational provision.

In such a situation a child's needs may be described as educational or care or a combination of both. The fact that a consistency of approach is required beyond the school day does not mean either that it is necessarily an educational need or that it can only be met by way of residential provision. The fact that a child has a need for consistency of approach in his dealings with adults outside of school as well as inside school does not mean necessarily that this is an educational need that needs to be met with educational provision beyond the school day. Similarly the fact that the well being of a child and/or his family may benefit from Social Services input or social support does not make that provision educational. However, it will always be a matter of fact and degree in judgment in each case in our view.

87. What is determinative from the law is that it is the individual needs of the child in question that determines the outcome. We accept that as argued by JF the key to T's progress and to achieve any quality of functional life is communication. We further find that T needs to generalise her skills from one setting to another; and have the use of speech and language therapy and occupational therapy delivered consistently both in and out of school. We also conclude that she needs a highly structured environment with clear rules to support her ability to regulate her behaviour and her sensory difficulties so that she can learn and occupy herself in socially appropriate ways. She needs access to physical activity as advised by the physiotherapist. We conclude first that these needs are all educational and that they must be provided at all times during the waking day, and it is not sufficient to provide these solely during normal school hours and days.

88. In T's case we are much assisted in determining whether the provision for her needs is educational, and therefore to be included in Part 3 of the Statement by the experts' evidence before us to which we have just referred. We accept RB's and JF's views that T's rare chromosomal disorder that affects the nervous system and manifests itself as global developmental delay associated with learning, speech and language, fine and gross motor and behavioural difficulties means that she is not capable of benefitting from independent learning in the absence of an adult and that she needs to be at a learning environment where her difficulties with communication are fully recognised, recorded and understood to the point where she has an individual means of communicating with others in a robust and predictable way. We accept the argument that the more systematic and intense teaching she has in the final years of her schooling, the more (all be it limited) progress she will make.

89. In summary, all the evidence we heard and read, is that the severity, multiplicity and complexity of T's disorder and its associated learning difficulties can only lead us to conclude that she requires a very high level of educational support and a particularly intense and consistent educational programme to develop her communication with the world and her understanding of her participation in that world, and that such level of education needs to be delivered throughout each waking day.

Are T's needs a mere need for consistency of approach across the waking day?

90. Given what we have set out above, whilst clearly T does require consistency of approach across the waking day, that is not her whole need. She needs the very high level of educational provision and a particularly intense and consistent educational programme to develop her communication with the world, which we have described above.

If T does require education outside of the normal school hours and days, whether the provision the LA argues as available is sufficient to meet T's special educational needs and if so whether this should be inserted in Part 3 of the Statement?

91. The Local Authority's contention was that in T's case, provision for her special educational needs could be based on her attending her current school through a normal school day, followed by the existing social care provision. The essence of its position was that there was no requirement for an extended day because much of what she would be

receiving beyond the normal school day was social care. For the reasons set out above we have found that there are clear reasons for an extended day curriculum for purely educational reasons.

92. This being the case, we have concluded that T's' educational needs are such and so severe and complex that she does require educational programmes which are consistent throughout the day across a range of settings and delivered by staff who are focused on the coherent and continuous delivery of communication strategies which will enable her to work towards the educational targets set for her. That is, in effect, a curriculum designed to address her needs throughout her waking days.

93. In the light of this, and given the way in which the LA puts forward its evidence of extra provision, we are not satisfied that the combination of the existing school provision together with the social care provision which is being made will meet T's' needs by providing the continuity, consistency and highly structured educational approach she requires beyond the normal school day.

As to Part 4

94. *Should Part 4 of the statement provide for a specialist post 16 placement providing residential placement and a waking day curriculum?*

95. Given our conclusions above as to the need for a waking day curriculum, which includes skill training on bedtime routines, continence training during the night and routines and skills upon getting up, it follows that the placement needs to be both residential and providing a waking day curriculum.

96. As to the need for a specialist placement our conclusions are that T needs a school specialising in the education of young people post 16 with severe communication difficulties with moderate to severe learning difficulties. The school should have experience in dealing with young people with a physical difficulty and who require occupational and physiotherapy programmes.

97. *Is B school meeting and able to meet in the future T's special educational needs?*

98. It is apparent from our views set out above that we have concluded that T requires a waking day curriculum. As this cannot be provided at B it is clear that it can not in the future meet T's needs as set out in Part 3 of the statement. In reaching this conclusion which was reinforced by the view of the school that it could not introduce swimming or hydrotherapy use into T's existing curriculum, we do not in any way criticise the school for the provision they have made for T in the past nor the strategies they have used.

99. The Ofsted report clearly evidenced that the school was outstanding in its post 16 provision and we heard no evidence which would suggest otherwise to us. Our conclusions are motivated by the need to maximise the time available for T's education and ensuring all the programmes set out in Part 3 of the statement can be delivered across the waking day.

100. *Can H School meet T's needs and be named in Part 4?*

101. This issued was canvassed by the parties at the conclusion of the hearing and the LA were clear that they remained unconvinced that H was an appropriate placement and were concerned that a large percentage of young people there were on the autistic

spectrum. We heard no professional evidence as to the suitability of H neither did we have direct evidence from the school itself.

102. For this reason we reserve the issue of the school to be named in Part 4 of the statement. We will list the issue for hearing before us allowing 1/2 a day in the absence of agreement between the parties.

Whether it is necessary for T to attend a residential School for thirty eight, forty eight or fifty two weeks in a year?

103. We have given careful consideration to the issue of whether or not T requires fifty two weeks provision. The parents current view is that they would like T home for some time during the year and do not seek a 52 week placement. However they do suggest that to maximize T's learning opportunities she should be at school for longer than 38 weeks in the year which is the standard residential provision. It does appear to us that all of the arguments which we have accepted for an extended day curriculum also apply to the days of the year. T is about to enter into her last years of education. The contention that the more education she gets over the next two years the better, whilst simplistically put is in fact in our judgment entirely right.

Whether her attendance at the school is an inefficient use of the Local Authority's resources?

104. Given our conclusions above that T requires residential education for 48 weeks a year and that B does not provide this, it is clear that a placement at a residential school is not an inefficient use of the Local Authority's resources.

105. In summary, we conclude:-

- i. That T's' needs identified by RB and the parents are special educational needs
- ii. As a result we have amended Part 3 of the statement to make provision to meet those needs.
- iii. What is being argued for is not a mere need for consistency of approach across the waking day.
- iv. T does require education outside of normal school hours and days, and the provision being argued for by the LA is not sufficient to meet her special educational needs
- v. It is necessary for T to attend a residential School for forty eight weeks in a year.
- vi. Her attendance at a residential school is not an inefficient use of the Local Authority's resources.

Order

106. That parts 2 and 3 of the statement be amended as set out in the statement attached.

107. That Part 4 of the statement shall name a residential special school specialising in the education of young people post 16 with severe communication difficulties with moderate to severe learning difficulties. The school should have experience in dealing with young people with a physical difficulty and who require occupational and physiotherapy programmes.

108. Either party may apply to list the case before us as to the issue of the school to be named in Part 4.

Dated 4 February 2011

Signed:



Tony Askham Tribunal Judge