

DECISION

Appeal No: 05-00948
Appeal By: Mr and Mrs M
Appeal Against: Surrey County Council
Concerning: J (born 30 September 1988)
Date of Hearing: 15 July 2005

Appeal

Mr and Mrs M appealed under Section 326 Education Act 1996 against the content of the Statement of Special Educational Needs issued by Surrey County Council (LEA) concerning their daughter J. The statement subject to appeal was issued on 1 March 2005.

Preliminary Matters

1. An application was made on behalf of Mr and Ms M to submit late evidence under Regulation 33(2) of our Regulations. This evidence comprised a number of reports none of which were available before the end of the case statement period. The evidence had been sent to the tribunal and to the LEA more than five working days before the hearing. There was no objection to the evidence being submitted, from the LEA, and we concluded that the evidence would not impede the efficient conduct of the hearing, and the evidence was therefore accepted as late evidence.
2. There was an application by the LEA to submit late evidence under regulation 33(2), being a letter from the head teacher of J's current school, dated 8 July. We concluded that this evidence could reasonably have been available to the LEA before the end of the case statement period, and therefore the document was not accepted as late evidence.

Facts

1. J is a pupil in Year 11 of G Special School, which is a special school for children with moderate learning difficulties and associated language difficulties, maintained by the LEA. J has special educational needs arising from moderate learning difficulties, moderate to severe hearing loss, epilepsy, physical difficulties and speech and language difficulties.
2. Since September 1999 J has attended G School, as a weekly boarder. J's residential place at G School was agreed by the LEA in the light of the parents' preference for residential provision and the availability of a boarding place, rather than on the basis of the LEA accepting that J had an educational

need for such placement. Nevertheless all concerned with J accept that she has prospered at G, and that this has been a successful educational experience for her.

3. The Statement subject to appeal was issued by the LEA largely to update the situation in terms of Part 2 of the statement, and to make amendments as to provision for J, in particular to name W School for her post 16 education, as G does not provide for pupils after Year 11. W School is a special school for children with moderate learning difficulties maintained by the LEA. The aged 16 - 19 Unit is a new development. The LEA aim to provide places for ten students from September 2005, in temporary accommodation. W School would not be residential provision for J.

4. Mr and Mrs M sought substantial amendments to Parts 2 and 3 of J's Statement, and in particular sought that she continue to receive residential provision for her needs, at S School. S is a non-maintained special school for moderate learning difficulties, physical difficulties and speech and language difficulties. The cost of the LEA of J's proposed attendance at S school would be in excess of £42,000 per annum. The cost to the LEA of J's attendance at W school would be nil, apart from transport costs.

Tribunal's Reasons with Summary Reasons

In reaching our decision the Tribunal had regard to the written and oral evidence submitted, to the Special Educational Needs Code of Practice, and to J's interests.

A. We decided to hear initial evidence, and then to announce our decision, on the question of whether J has an educational need for residential provision for her difficulties. We adopted this approach as our finding on this first point would then have an influence upon the evidence to be heard subsequently as to J's specific needs and specific provision otherwise.

B. In seeking J's attendance at S school, Mr and Mrs M particularly relied upon the conclusions from the S school assessment report from June 2004, the recommendations made by the annual review at G in November 2004, the report of B, educational psychologist, from December 2004, and her oral evidence to us, and the Burwood Centre reports from June 2005. Mr and Mrs M's case was that J required residential provision so that all of her needs could be met, and in particular that she could safely develop her educational, social and communication skills.

C. The LEA case was put on the basis that given that a Special Educational Needs Tribunal in 1999 had not accepted that J had then had a need for residential accommodation, and given that she was now more mature, it was unlikely that her needs had changed such that she now needed residential provision. The LEA stressed that their own decision to provide for J at G school on a residential basis was as a matter of their discretion, not needs led. The LEA are concerned that J would lose links with her local community, and the chance to move towards independence in her home

setting, if she had provision on a residential basis at this time. The LEA did not accept that an inter disciplinary approach in relation to J's therapeutic needs could only be carried out in a residential setting. The LEA were not persuaded that a change to non residential provision at this stage would be a challenge that J would not be able to manage.

D Whilst we entirely accept that J was found not to have an educational need for residential provision at the time that she had begun her education at G School, nevertheless we could not ignore the impact of residential provision upon J, and the expectation that it had given rise to, in relation to future provision for her. We were mindful of J's own views particularly as she is nearly seventeen years of age, as written in a letter dated June 2004 expressing how much she had liked S school when she was there for her assessment and how she wanted to live with people like herself. We noted the theme through the reports relied upon by Mr and Mrs M of J's need for consistency, reinforcement, and an appropriate peer group. We accepted the conclusions and recommendations in these reports. We were persuaded that in this particular case the special educational needs presented can only be met in a residential setting. We made that finding on the particular facts.

E. We announced this finding to the parties, whose representatives were then able to reach substantial agreement as to amendments to Parts 2 and 3. The LEA acknowledged that they had no other residential proposal to put as an alternative to S school. We attach to this decision document JHB1, being the agreement reached and signed by the parties representatives. Those matters to be decided by the tribunal are noted within the document.

F. On page 4 of the agreement we were asked to decide on the first two bullet point paragraphs taken from the Burwood Centre report. We conclude that neither of the paragraphs should remain in Part 2. We had no specific evidence, personal to J, of her mental health being at risk. The second paragraph we deleted as it is a repetition.

G. On page 5 of the document we conclude that the first 4 bullet points should be retained, and can remain at this point in Part 2. The fifth bullet point can be deleted, as being repetition, other than that the reference to J having a bilateral sensori-neural hearing loss can be moved to be confined in the third paragraph on page 1 of the agreement, the second line of which should then read

" this includes a slight palsy on the right hand side and also a bilateral sensori-neural moderate to severe hearing loss, ..."

H. In part 3 we were left to decide whether the first two bullet points from the Burwood Centre report, on page 7 of the agreement, should go into Part 3. We decided that references to the educational setting having proven success in the past might draw the description too narrowly and unnecessarily. We decided that it was appropriate to blend those two paragraphs into one, so that the new paragraph reads,

" for her post 16 education and learning provision, J requires a learning and social environment which offers expertise and skills for addressing the complex and compounding combination of J's disability and needs, in order to address the gaps in J's social understanding and to improve her motivation self confidence and social responsibility."

We have incorporated our findings into the agreed document attached.

Order

Parts 2 and 3 of J's statement are amended as agreed and otherwise found by the tribunal, as per document JHB1 attached, and Part 4 of the statement is amended to read,

" a residential special school for children with moderate learning difficulties, physical difficulties and speech and language difficulties - S School, from September 2005".

Signed

Neil P Confrey, Chairman

28 July 2005