

DECISION

Appeal No: 06-03268
Appeal by: Mr & Mrs R
Against decision by: Gloucestershire County Council
Concerning: O (born 30 March 1996)
Hearing date: 26 February 2007 and 30 April 2007

Tribunal Panel Mrs Maureen Grenville (Chair)
Mrs Jenny Maddick
Dr Heather Murdoch

Appeal

Mr & Mrs R appeal under Section 326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs issued by Gloucestershire County Council (the LA) in respect of their son O.

Attendance

Mr & Mrs R attended the hearing and were represented by Mr D Silas, a Solicitor. Dr P, an Educational Psychologist, and Ms G from B School attended as their witnesses

Miss F Scolding, a Barrister, represented the LA. Ms I, an Educational Psychologist, and Mrs W, SENCO at S School, attended as witnesses for the LA.

Preliminary Matters

(a) This decision should be read in conjunction with the adjournment notice dated 26 February 2007, a copy of which is appended hereto marked "A".

(b) In accordance with the directions given in the adjournment notice a working document had been produced, which is appended hereto marked "B". For ease of reference the paragraphs in the Educational section of Part 2 have been numbered.

(c) At the hearing we were informed that whilst there was no agreement in respect of Parts 3 and 4, further agreement on Part 2 had been reached as follows:

- The word "some" in paragraph 1 should remain
- The wording of paragraph 4 was agreed except with regard to the final sentence
- Paragraphs 5, 11 and 12 were agreed
- Paragraph 7 should be deleted in favour of paragraph 8

- The first sentence of paragraph 13 was agreed, subject to deletion of words “who has worked with O for a number of years”, but there was no agreement about the second sentence of this paragraph

- The spelling error in respect of congenital under PSM was accepted

(d) During the course of the hearing:

- Mr Silas asked us to accept a further amendment to his proposed wording for Part 3, on Page 5 of the working document, which involved deleting the wording in parenthesis reading “5 x 30 minute sessions ...part of a small group” and substitution of the words “with regular support for 2 hours per week”

- Miss Scolding asked us to accept a further amendment to her proposed wording to include an additional paragraph in Part 3 reading “O requires a 30 minute individual session for literacy and handwriting with a teacher who has qualifications and training in working with children who have specific learning difficulties. This should be reinforced in daily sessions with a Teaching Assistant on an individual basis for the rest of the week for a minimum of 30 minutes per day”

(e) There was a request for us to accept as late evidence a letter from Dr de Gressi which was referred to in the LA supplemental submission and which should have been included with it but was omitted due to an administrative error. It had been sent in to the Tribunal Secretariat over 5 days before the hearing and the other requirements of Regulation 33 had been complied with. There was no objection to this request and we agreed to it

(f) Mr & Mrs R indicated that if we concluded that both schools could meet O’s needs, and the matter fell to be decided on costs, they would be willing to give an undertaking to pay the transport costs in connection with the placement at B School.

Facts

1. O is 11 years one month old and a Year 5 pupil at B School, which is an independent school. He has been a pupil there since January 2007. Before that he was a pupil at C Junior College, another independent school, which he had attended since June 2002. By reference to his age he would be a Year 6 pupil but he has been working in the year group below his chronological age since repeating his reception year, and there is a consensus that this should continue.

2. O was born with a congenital heart defect. When young he underwent 5 open heart operations. It is known that he will need another major operation before he reaches adulthood, and his parents report that this could be within the next year.

3. Whilst the family lived in the London Borough of Westminster he was seen in the Child Development Centre of St Mary’s Hospital, and was issued with a Statement of Special Educational Needs by Westminster, which stated that his special educational needs arose from his delayed expressive and receptive language skills. The family moved to Gloucestershire in June 2002, at which time he started at C Junior College, in consequence of which he has never actually attended a school maintained by the LA.

4. Dr P, Chartered Psychologist, has seen O on a number of occasions. Her assessment scores from February 2006 indicate that O has a mixed profile of abilities

with some skills falling in the average range of ability and some falling below the average range. His relative strengths were in verbal comprehension (91) and perceptual reasoning (86) whilst his weaknesses were in working memory (77) and processing speed (75). His overall IQ score was 78, but Dr P concluded that this was likely to be misleading and that he was best described as a pupil of average verbal comprehension, who experiences specific difficulties with tasks involving working memory and transcription (written recording).

5. O has a history of delayed language and social communication skills. In February 2006, when seen by Ms Shilling (Independent Speech and Language Therapist), he was found to have significantly delay across all aspect of communication. Thereafter she worked with him on a weekly basis and by October 2006 reported that he had benefited from a structured approach to increasing information in his spoken language, which had aided his auditory memory and processing skills, albeit that such skills were not then sufficiently developed for him to use them independently in the classroom.

6. O is a small, fragile child, who cannot participate in contact sports and cannot participate fully in other sports or playground activity. His social skills are poorly developed and he finds it difficult to make friends. His self esteem is low.

7. It is predictable that when O has to undergo further open heart surgery, he will miss a substantial amount of schooling, although exactly how long he will be off school cannot be predicted.

8. C Junior College has high academic standards and O struggled there. His difficulties increased when he moved from the Lower to the Middle school in September 2006, following which he not only had to cope with increased academic pressures, but also the need for greater self organisation. Prior to his transfer to B School he was receiving full time individual support at C.

9. B School is a mainstream school which admits a high number of pupils with special educational needs. It has Junior and Senior departments, which means that if O stays there he will not have to change school again. The Junior department has 42 pupils divided between a Year 3 / 4 group, a Year 5 group and 2 Year 6 groups. O is educated in a group of 10 pupils with the following profiles:

- 1 has Asperger's syndrome
- 4 have dyslexia
- 1 has had a cochlear implant
- 1 has difficulties with numeracy
- 1 has dyspraxia and dyslexia
- O
- 1 with no specified problems

The class group is supported by a Class Teacher. There is no permanent group support from a Learning Support Assistant (LSA) although there is on occasion some floating support from 2 LSA's who are employed for the whole of the Junior Department. O has been allocated his own full time LSA who was employed by the school specifically to do work with O. Work is differentiated by method.

10. O currently receives 2 hours per week specialist teaching from Mrs G, which addresses literacy, problem solving and social skills. He also receives 15 minutes per day individual reading time with the LSA. Speech and Language issues are addressed by (1) participation in PHSE groups (2) attendance for one hour per week at a social skills group run by a speech and language therapist (3) individual sessions of one hour once per week with a speech and language therapist and (4) informal reinforcement of social skills issues in class.

11. It is thought that O has made progress since moving to B School, particularly with regard to working independently. Thus, for example, he is now able to make reminder notes for himself and use them effectively so as to reduce his reliance on the LSA for organisational issues. In consequence, the full time LSA, although always available for O during lessons, does not have to work with him full time. During playtimes and the lunch break O manages in the Junior department of 42 pupils without individual support, although there have been occasions when staff have intervened to assist with his social interactions

12. B School is a boarding school as well as taking day pupils. It has a school nurse on site.

13. The LA proposal is for O to attend S School. This is a maintained mainstream primary school catering for 304 pupils aged between 4 to 11 years .It operates a system of single and mixed year groups and in the upper part of the school the current structure is that there is a Year 5 group, a mixed Year 5/6 group and a Year 6 group. The school does not have a large number of children with special educational needs. There are currently 12 children at School Action, 7 at School Action Plus and 1 with a Statement. The school has, however, developed a special needs partnership with a neighbouring school for children with severe learning difficulties, and also has links with a local moderate learning difficulties school. The school has access to a school nurse and physiotherapy services. Advice on equipment and differentiated PE curriculum can be obtained from a Disability Advisory Teacher. It has access to the LA's Reintegration Service in cases where children are hospitalised for long periods of time. It also receives visits every 6 weeks from the LA's Communication and Interaction Advisory Teacher and also from a speech and language therapist. Twelve hours per week of LSA time is allocated to pursuing a wide range of communication based group activities such as social stories groups, motor skills activities and touch typing courses. Social skills are covered by PHSE, and if required, can be delivered additionally on an individual or paired basis by either the class teacher or an LSA. Work is differentiated by the class teacher. Mrs W, the school SENCO, works part time, and within that part time appointment she has 7 hours protected SEN teaching time.

14. If O were to attend S School he would be placed in either the Year 5 group or the mixed Year 5/ 6 group; the latter would have the advantage that he would keep the same class teacher next year. The school has 9 LSAs who float around the school. There is no guarantee that an LSA would be in his class group at any particular time, although the aim is for each group to have an LSA for one morning per week. Since O will need a minimum of 15 hours LSA support (being that prescribed by the Statement as drawn) the proposal is to employ another LSA with specific skills in language and dyslexia, to work specifically with him. This would be used flexibly for the purposes of delivering any additional programmes recommended by the Advisory Teacher and/or the Speech and Language Therapist, and to provide support in class.

15. S School has a 2 sitting system for lunch but towards the end of the lunch break all of the children are in the playground. There are 4 midday supervisors. Children who cannot cope with the large, busy, playground may ask a teacher for permission to go into the library, but this has no permanent staff cover at break or lunchtime.

16. Other provision from which O might benefit were he to attend S School is:

- An individual 30 minute weekly literacy session with Mrs W, the School SENCO
- The possibility of joining one hour differentiated literacy sessions run by Mrs W for groups of up to 4 pupils
- He is eligible for the “catch-up” reading programme which is run by an LSA who is a qualified teacher and who runs 30 minute individual sessions for some pupils on a weekly basis
- Social skills in PHSE as part of standard curriculum, plus possible individual or 1:2 sessions
- Springboard intervention in numeracy
- Possible use of the buddying scheme
- Possible use of the school reward scheme to give him classroom responsibility
- Possible allocation to a 30 minute special needs teaching session which might involve a language session or individual social/sequencing for modelling language
- Pre-tutoring for science
- If he was in the Year 5 group he might be able to share in the services of an LSA already allocated to that group for 3 mornings per week, to support another pupil

Tribunal’s Conclusions with Reasons

We carefully considered the written evidence submitted to the Tribunal in advance and the evidence given to us at the hearing. We also took account of 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. O’s language is delayed, rather than disordered, and in principle he should be able to make further progress with his language skills. His fragility, limited social skills and poor self esteem are all, however, significant barriers to learning at the present time.

B. O’s difficulties are not so great as to require education in a special school. A suitably structured and staffed mainstream school should be able to educate him successfully.

C. It is predictable that when O has further surgery he will have significant amounts of time off school, and that this will have an adverse impact on both his academic and social development. We were hampered by the failure of the LA to provide sufficient current medical evidence; the letter from Dr Z is brief and fails to address key issues such as the likely timing of further surgery and any predictable consequences in terms of absence from school, and subsequent limitations on accessing the curriculum. O is under the care of specialists in London and reports from them should have been obtained, so that this aspect of need and provision could be better considered. In the absence of such evidence we had to rely on the oral evidence of Mr & Mrs R, who spoke of the operation possibly occurring before the transfer to secondary education in September 2008.

D. O experienced failure at C College and it is important that he experiences success in future. He needs to be educated in an environment which will facilitate this, not only in terms of delivering specific programmes of work, but also in terms of the general school environment which needs to be non threatening for him. The environment also needs to be flexible enough to respond to his needs once the further surgery is undertaken, assuming this to be in the foreseeable future.

E. O has already suffered recent disruption to his education, by having to leave C College during the current academic year. He would benefit from a period of stability in his education, particularly bearing in mind the likelihood of some disruption arising from the further proposed surgery.

F. In respect of the specific wording in Part 2 the outstanding disputes were principally about the inclusion or exclusion of historical material. We do not consider it helpful to include too much information and we did not therefore favour much of the wording proposed by Mr & Mrs R. Insofar as their proposals related to handwriting difficulties, we did not accept that this needed the emphasis which they gave to it, as his handwriting is not a major problem.

G. We accepted Mr & Mrs R's contention that O needs a staff pupil ratio of not more than 1:15. Dr P supports this, and it is what he experiences at B School. Furthermore, we considered it significant that Ms I made the point that the ratio of adults to pupils is more important than overall class sizes and that it was highly unlikely that he would be in a class of 30 children with one adult. As soon as there are 2 adults in such a class group, the ratio reduces to that sought by Mr & Mrs R

H. O needs remedial work on literacy. The 2 hours per week which he currently receives appears to be working and is, therefore, in our judgement, about right for the moment, although in future it may be capable of variation, depending on both general progress and the timing of any medical intervention.

I. O also needs substantial individual support in class from an LSA. We accepted the evidence of Ms G in this respect. She explained that even in the small group environment at B School he needed support of 25 hours per week. She conceded that this did not all have to be on an individual basis, although it did have to be available at all times. The explanation for this high level of support was given by Dr P, who referred to the need for support having changed over time. Initially it had been needed principally for communication issues but now the need was much broader, covering the range of issues canvassed in her reports. We accepted this to be the case, although we could see that as O progresses (and ignoring any particular issues which may arise after the proposed surgery) the need for this high level of support is likely to reduce. Ms G also thought such a reduction likely, and speculated that he would not need individual support by the time he transfers to secondary education. We noted that in part this was to do with the different way in which the Senior School is structured at B, but we also noted that O is already beginning to be weaned off the support which he now has. We did not underestimate the issue of "learned helplessness" raised by the LA; it is an issue to which all will need to be alert in the future, but in our judgement he still needs the 25 hours support proposed by Mr & Mrs R. The LA suggested 15 hours per week, but was unable to explain coherently how this would suffice, given his need for some attention in all lessons. In

our view the key to the issue is that he needs access to LSA support for 25 hours per week but does not need it on an individual basis.

J. We do not consider that O needs access to medically qualified nursing staff as educational provision. A distinction needs to be made between medical issues per se and the educational consequences of his medical condition. What is required is access to nursing support and, critically, appropriate risk assessments undertaken with full medical information; inevitably this will require acquisition of the up to date medical reports which we lacked.

K. Mr & Mrs R preference for B School falls to be dealt with under Section 9 of the Education Act 1996. This means that they are entitled to have the school named if the school can meet O's needs, the costs of the placement would not be unreasonable public expenditure, and there are no other factors which should defeat the preference. The LA relied on the public expenditure point but did not concede that B school could meet O's needs, saying instead that it had "concerns" about the school and asserting that S School was more suitable. These concerns were highlighted by Ms I, who said that they centred around the quality of teaching and learning opportunities in the primary department, and the level of GCSE results obtained by pupils at the school. Such concerns fall far short of anything which could enable us to find that B School cannot meet O's needs, and we rejected them. We were satisfied that the school is currently meeting his needs and will be able to do so for the foreseeable future. The fact that it offers a Senior Department is a bonus for O, bearing in mind our conclusion concerning the benefit of stability.

L. We accepted that S is a very good school which operates to high academic standards, but we did not accept that it could meet O's needs, for the following reasons:

- It is a large school, and whilst this would not preclude it being able to educate O effectively, it is significant within the context of our other findings
- The classes are also large, and do not routinely offer a staff pupil ratio of 1:15 or less. Both the LA and the school proposed a model which relied upon 15 hours of LSA support for O, and Mrs W was unable to give a commitment that one of the floating LSAs would be in the classroom when the designated LSA was absent. Clearly, we were in a position to order 25 hours of LSA support, which would have achieved the reduced ratio, but we did not consider that this would solve the problem completely since the school does not have a culture of small group sizes, and therefore there is a real danger of O being distinguished from his peers, in a way that would be detrimental to his already fragile self esteem
- The school is an academic one, and we did not believe that O would feel comfortable there, particularly bearing in mind his recent experience at C College. This problem is exacerbated by the lack of a sufficiently coherent pastoral support package for SEN pupils and/or pupils with self esteem problems. We accepted that this may well be because it is not a problem which is often encountered within the school, there being comparatively few children with SEN. That does not, however, assist O, for whom these issues are significant and require to be addressed immediately.

- The arrangements for break and lunchtime are unsatisfactory. O is a physically delicate child. We could not envisage him coping in the large school playground environment and we were not reassured by suggestions that he should approach a teacher and ask to go to the library. Quite apart from the issue of what he would do there, and who would supervise him, it is apparent that if he had to seek such special treatment it could further deflate his already low sense of self worth.
- We were not persuaded that the school could make all of the provision described in Part 3, even as drafted by the LA. The amendment sought by Ms Scolding at the hearing refers to daily sessions with a Teaching Assistant (LSA) for a minimum of 30 minutes, but Mrs W failed to explain how this was to be achieved. Similarly, we were not clear about exactly how the personal, social and emotional aspects of provision would be made. Mrs W's evidence was littered with comments such as "O is eligible for" certain provision, and that he "might" join this group or that group, none of which gave us confidence about the quality of the provision which would be made for him
- A major problem for the LA was that S School had not even decided which class group to place O in were he to attend the school. No explanation was given for this, but it was almost inevitable that in the absence of such a decision having been made, the rest of the proposals would lack substance.
- We noted that Mrs W works part time as the SENCO, with some of that time being protected for SEN teaching. Given the inchoate nature of the plans for O, this caused us concern. It is obvious that, were he to be placed in the school, a lot of work would be required to sort out the plans, and make them work effectively; we were not satisfied that Mrs W would be available to do this, and we heard no evidence which suggested that there was anyone else who could fulfil the role. We also had concerns about her ability to devote the necessary time to sorting matters out for O if he requires another operation before July 2008 (when he would be due to leave S School in any event)

L. Having concluded that S School could not meet O's needs we did not consider costs issues and for this reason there are no findings of fact with regard thereto.

Order

Gloucestershire County Council is to amend the Statement of Special Educational Needs in accordance with the document (which is based on the working document) attached hereto and marked "Appendix C". Text which has not been deleted by us shall stand, irrespective of the typeface, and of any deletions in the original working document

Date 25 May 2007

Signed:

Chair: Mrs Maureen P Grenville