

DECISION

APPEAL NO: 10-00336
APPEAL BY: MR & MRS T
AGAINST DECISION BY: HERTFORDSHIRE COUNTY COUNCIL
CONCERNING: F
HEARING DATE: 6TH JULY 2010
TRIBUNAL PANEL: MR MICHAEL SHERWIN (TRIBUNAL JUDGE)
MS CAROL MAY
MRS GLENNIS COPNALL

APPEAL

(i) Mr & Mrs T appealed pursuant to Section 326 of the Education Act 1996 against the contents of Parts 2 and 3 of a Statement of Special Educational Needs made by Hertfordshire County Council ("the LA") in respect of their daughter F. There was no appeal in respect of Part 4.

(ii) The parents were represented at the hearing by their Solicitor Mr Douglas Silas. Both parents gave evidence, and evidence was given on their behalf by Ms P, an Educational Psychologist; Ms H, a Speech and Language Therapist, and Ms S, the Inclusion Officer (or Special Educational Needs Co-ordinator) at P School.

(iii) The LA was represented by Counsel, Mr Jonathan Auburn. Evidence was given on behalf of the LA by Ms C, an Educational Psychologist; Ms B, a Speech and Language Therapist, and Mr G, the Head Teacher of P School.

FACTS

1. F is a pupil at P Primary School, a mainstream school maintained by the LA. Despite her special educational needs, her parents believe it would be in her interests for her to have a mainstream school experience, and although Mr G, towards the end of the hearing, queried whether a mainstream school placement was the right one for F, there was no challenge by the LA to the parents' choice of school for their daughter. Indeed Mr Silas reminded us of Section 316 and 316A of the Education Act 1996 and the legislative steer towards inclusion of children with special needs in mainstream provision.

2. F received a diagnosis of autism in September 2009. She has associated difficulties with social communication, receptive and expressive language impairment, a sensory based motor disorder and sensory integration difficulties. She also has severe dyslexia and dyscalculia and fine and gross motor difficulties. Ms H, during the course of the hearing, confirmed that F's language is not simply delayed, it is disordered. Accordingly, her needs are complex.

3. On 6th June 2009 the school made a formal request to the LA for a statutory assessment. The LA agreed to undertake the assessment; in September 2009 F started Year 2 at P School at School Action Plus; on 10th November 2009 the LA had a meeting with F's parents and on 9th December 2009 the LA made a Statement of Special Educational Needs. F's parents were concerned that Part 2 of the Statement did not contain a sufficient description of her needs, and the provision in Part 3 was insufficient, and unspecific.
4. On 4th February 2010 F's parents appealed to the Tribunal. Mr Silas drafted a lengthy and detailed document setting out the Grounds of Appeal.
5. On 25th March 2010 the LA responded to the appeal; both parties submitted professional reports in support of their respective positions.
6. By the date of the hearing a working draft Statement was made available to the Tribunal, indicating that a substantial measure of agreement had been reached between the parties, although a number of points remained to be resolved by the Tribunal.
7. The hearing was listed to start at 2.00pm; the parties and their witnesses attended early and very helpfully agreed to start the hearing earlier (as there were so many points to be discussed) – the hearing commenced at 1.25pm.
8. During the course of the hearing agreement was reached following discussion on a number of points; in respect of some matters in contention the Tribunal was able to suggest alternative wording which was sometimes accepted by the parties, and sometimes not.
9. In respect of Part 2 of the Statement, F's parents substantially relied on reports prepared by an Educational Psychologist on their behalf, Ms P, on 7th November 2009 and 21st April 2010. The LA relied on the advice of its Educational Psychologist, Ms C, who prepared a report on 18th August 2009.
10. There were substantial disputes with regard to therapeutic provision, with F's parents relying on the advice of Ms H who wrote a report on 11th December 2009; the LA relied on the advice of Ms B who wrote a report on 16th September 2009. In respect of occupational therapy the parents relied on the advice of Ms M who wrote a report on 11th December 2009; the LA relied on advice from an NHS therapist and we will refer to those reports later.
11. The amendments to Part 2 of F's Statement which we have ordered follow discussions during the hearing which either resulted in agreement, or involved the Tribunal hearing evidence from Ms P and Ms C (particularly in relation to progress) and considering points made by Mr Auburn and Mr Silas.
12. The discussion in relation to Part 3 involved the Tribunal considering more extensive evidence, which we will summarise below.
13. First, F's parents requested an amendment whereby F should be provided with a literacy and numeracy course delivered by a teacher qualified to teach pupils with

dyslexia or specific learning difficulties. This was recommended by Ms P but not supported by the LA, whose view was that the course could be delivered by a learning support assistant ("LSA") under the guidance of a specialist teacher who would set up and monitor the programme. The proposal was that each course should involve a total of 3 hours' work each week. During the course of the hearing the Tribunal invited the parties to consider a combination of the two approaches, whereby the specialist teacher delivered one of the sessions each week. An LSA would observe those sessions and rehearse the programmes on a daily basis. The Tribunal suggested that this might be appropriate, bearing in mind the evidence that F required a great deal of repetition and over-learning. The Tribunal's suggestion commended itself to both parties and their expert witnesses, and will form the basis of the Tribunal's Order on this point (see paragraphs (k) and (l) in the Order).

14. There was also discussion about the role of the Specialist Advisory Teacher Service for Autism, and an acceptance on the part of both parties that F had a need for specialist advice both in relation to her dyslexia and in relation to autism. We heard evidence from Ms P and Ms C in relation to this and have dealt with the point in our Order at paragraph (m).

15. There was a significant debate about F's need for speech and language therapy. Ms H, in her report dated 11th December 2009, recommended weekly sessions of therapy, of 45 minutes duration, with a qualified speech and language therapist. The LA, basing itself on a report written by Ms B on 16th September 2009, recommended six sessions of speech and language therapy over the year, each of approximately one hour's duration. The parties agreed that until February 2010 F had received no speech therapy, a point emphasised by Ms H when she urged us to accept her recommendation. Ms H said that F had complex difficulties with language, some of which were significant. Her language was disordered. At the age of seven, she had some sessions with a therapist, Ms L, on a monthly basis; Ms L had increased the input to fortnightly sessions; Ms H was not surprised by this. Ms H made reference to the targets set out in the speech and language therapy programme prepared in February 2010; she said they had not been achieved and it was important to set small enough targets to enable F to feel that she was achieving something from one weekly session to the next. In her view, a fortnight in between sessions was too long.

16. Ms B agreed that F had significant needs in relation to expressive and receptive language, as did many children on the autistic spectrum. She advised that speech and language therapy was not normally provided on a weekly basis for children with autism because of the difficulties they had in generalising. In her view, there should be some direct therapy, with opportunities for support. She explained her recommendation of sessions lasting one hour by indicating that this envisaged that the therapist would do some indirect work as well as direct work with F. She envisaged that if her recommendation were accepted, F would see a speech and language therapist approximately once every three weeks.

17. There was also a substantial dispute between the parties in relation to occupational therapy provision. The parents sought weekly provision, with sessions of 45 minutes; the LA suggestion was a minimum of six sessions each year, of 30 minutes duration.

18. The parents' case was based on the advice of an occupational therapist, Ms M, who prepared a report on 11th December 2009. Ms M advised that the therapist should have experience in sensory integration and working with children on the autism spectrum. She recommended that the sessions take place at school, and that her LSA should be present *"to facilitate carry over of strategies throughout the day"*.

19. Ms S told us that an occupational therapist, Ms R, had visited the school in February 2009 and set targets for F, and offered advice to the school. In her report dated 10th August 2009 which was before the Tribunal, she recommended that F would require twenty one sessions of therapy over the year, here should be eighteen direct sessions and three indirect sessions. She went on –

"The type and frequency of therapy intervention will be reviewed annually as a minimum but may be amended to address any new identified specific therapy needs following discussion and agreement with the child's named therapists. It is anticipated that five sessions will take place in school."

20. Mrs T told us that Ms R had left in October 2009; Ms S said that F had found the sessions of occupational therapy helpful – they had given F confidence in PE sessions and enhanced her self esteem – since Ms Roberts left, the school had done its best to work with F on the targets.

21. The LA also referred to a letter from Ms Jacquie Follett, an occupational therapist, who had visited the school on 18th March 2010 and reviewed her case notes. In her letter, which was dated 27th May 2010, she drew the following conclusions:

"1. Treatment sessions have not made any noticeable difference to the rate of progress towards her targets;

2. Because of her poor attention and concentration, she benefits more from daily practice in real life situations in order to refine her skills, rather than blocks of treatment.

3. Because of her slower progress towards targets than was anticipated, she needs less frequent review assessments.

4. F will need additional adult support in school in order to refine her skills, as detailed in the occupational therapy report dated 29th March 2010."

22. That report, signed by Ms F, was also available to the Tribunal and in the summary, Ms F said that *"because of her attention difficulties (F) will benefit most from a "little and often" approach to learning and therapy, which allows her regular practice through the day in order to refine her skills"*.

23. Mr Silas suggested that Ms F's recommendations were resource led, a suggestion stoutly refuted by Mr Auburn who submitted that the recommendation was a professional, clinical one. He made four points –

- There was nothing to indicate that targets had been identified for which weekly therapy was needed;
- F will benefit most from a "little and often" approach.
- F's rate of progress would not be suited to weekly targets;
- Occupational therapy would involve withdrawal from the class.

24. In response, Mr Silas suggested that Ms M recommended weekly therapy partly to ensure that F's sensory and modulation needs were met.

25. The final substantive point of disagreement between the parties concerned the number of hours of LSA support F would need. The parents sought 27 hours per week and suggested how the support should be used. The LA suggested 21 hours per week of LSA support and Mr Auburn said he had no difficulty with the parents' analysis of how the support should be used, save that the LA did not accept that F needed LSA support over the lunchtime break. He said that accounted for the difference in the number of hours.

26. We heard brief evidence on this issue from Ms S, Mr G, Ms P and Ms C, who had observed F at school during the lunchtime break and said that it appeared to her that F had started to engage with a group of girls in play, although she needed some prompting. Ms S suggested that F did have a need of support at lunchtime, at least initially as she made the transition from Year 2 to Year 3 which she thought would be quite a big transition for her; Mr G added that the two year groups were in different parts of the school. Mr G made the point that the school had the benefit of a very good group of midday supervisors. Ms P spoke of the benefit of teaching social skills at playtime. Her observation had spoken of F being like "a satellite moving round a planet", ie not actively involved in play but appearing to follow others.

27. At the end of the hearing we heard summary submissions from Mr Auburn and Mr Silas.

TRIBUNAL'S CONCLUSIONS WITH REASONS

28. In reaching our conclusions on this appeal, we have carefully considered the written evidence submitted to the Tribunal in advance of the hearing, the oral evidence given during the hearing and the submissions made by both representatives. We have considered the relevant legislation and the Code of Practice.

29. We do not think it necessary for us to make any specific findings in relation to Part 2 of F's Statement, which was substantially agreed as a result of discussion during the hearing. We approve the amendments agreed.

30. As to Part 3, we need to make findings in relation to the literacy and numeracy courses, speech and language therapy input, occupational therapy input and amount of LSA time.

31. In relation to the literacy and numeracy course, we think the appropriate provision is for F to have one hour each week delivered individually by a teacher qualified to teach pupils with dyslexia/specific learning difficulties. These sessions should be observed by an LSA who will rehearse the programmes daily to a total of two hours each week delivered in individual or small group sessions. We accept Ms P's formulation that the courses should be structured, multi-sensory, progressive and subject to formative assessments.

32. So far as the input from the Specialist Advisory Teacher Service for Autism is concerned, we have modified the bullet point which deals with this to make it clear that in our view the SENCO and the class teacher should receive advice from the specialist teacher, and that a minimum of two visits per term is needed. We accept the reasons given by Ms P for the need for this input, as set out on P 18 of her report dated 30th April 2010.

33. In relation to speech and language therapy, we prefer the recommendations of Ms H, although we believe that sessions of 30 minutes rather than 45 minutes are indicated, because F has such little concentration (and to take account of F's need not to be withdrawn from class too frequently, otherwise she will not benefit from the mainstream school experience). We accept that F needs a "kick start" in relation to development of language skills and that she needs very small, achievable targets in order to catch up. She needs an opportunity to have intensive language input. In our Order we propose to add that the therapist should liaise with the class teacher, the specialist teachers and other involved professionals.

34. In relation to occupational therapy, we accept the recommendations of Ms M. We accept the evidence from F's mother, confirmed by Ms S, that F was benefiting from the therapy provided by Ms R before she left. In our view, however, the sessions should be for 30 minutes duration, for the same reason as we consider the speech and language sessions should be for 30 minutes each.

35. As regards LSA time, we have carefully considered the evidence and concluded that the appropriate LSA input would be for 24 hours each week; 20 hours each week should be devoted to curriculum time, including the need for the LSA to be present for sessions with external specialists; 2 hours a week should be allowed for non contact time (eg, liaison with the class teacher) and 2 hours per week for the LSA to help F to develop social and physical skills during break times.

ORDER

We order the LA to amend F's Statement of Special Educational Needs so that it conforms to the document appended to this decision, but with the following further amendments:

Part 2

P 1

(a) In the first box, incorporate the LA's wording.

(b) The first paragraph under the heading "Educational" is to read as follows –

"F's performance can be inconsistent from day to day and she has made very little progress. In July 2009 towards the end of Year 1 ...".

(c) Delete the sentence sought by the parents in the box, which starts *"Although of average verbal ability ..."*.

(d) Put in the sentence in the box which starts *"Less than 1% of children ..."*, with the additional words *"in word reading and spelling"* after the word *"achievement"*.

(e) Insert the parents' sentence in the box about F's learning difficulties, but amend it so that it reads –

"F's literacy and numeracy difficulties persist despite being taught in small groups and having an individualised curriculum."

(f) Delete the words in the box at the bottom of the P.

P 2

(g) Under the heading "Self Care and Independence Skills", insert the words sought by the parents in the first box, adding the words *"at home"* at the beginning.

Insert the following sentence which derives from the words in the second box –

"F needs a high level of personal care throughout the day for dressing, toileting and eating."

(h) In the paragraph under the heading "Physical, Sensory and Medical", amend the fourth sentence so that it reads –

"F's handwriting and fine motor difficulties pose a significant barrier to accessing the curriculum and impede the development of self care skills."

(i) In the same paragraph, include the words *"and modulation"* in the following sentence.

P 3

(j) Amend the third bullet point in the summary so that it reads –

"• Social, communication and language skills"

Part 3

P 4

(k) In paragraph 1, amend the fifth bullet point by inserting the words *"individual or"* before the words *"small group support"*.

(l) Delete the three bullet points which appear in the box, and insert the following as the sixth bullet point –

"• F should be provided with a structured progressive and multi-sensory literacy and numeracy course which should be subject to formative assessments. For one hour per week, the programme should be delivered individually by a teacher qualified to teach pupils with dyslexia/specific learning difficulties. The specialist teacher's sessions are to be observed by F's learning support assistant who will rehearse those literacy and numeracy programmes on a daily basis to a total of two hours a week delivered in individual or small group sessions."

(m) Under paragraph 2, in the first bullet point, delete the word *"that"* after *"staff"* in the first line and replace it with the word *"who"*.

The second bullet point is to read as follows –

"• The SENCO and class teacher will receive advice from the Specialist Advisory Teacher Service for Autism and oversee the implementation of recommended strategies. A minimum of two visits per term is needed."

P 5

(n) Under paragraph 3, amend the first sentence in the first bullet point so that it reads –

"F will be provided with direct speech and language therapy with a qualified therapist on a weekly basis, for sessions which last for a minimum of 30 minutes."

Add a third sentence as follows –

"The therapist is to liaise with the class teacher, the specialist teachers and other involved professionals."

(o) Delete the sentence in the box, and insert the following sentence at the end of the second bullet point –

"F's language progress will be regularly reviewed and formally assessed annually."

(p) Amend the final bullet point so that it reads –

"The class teacher will provide F with a daily home/school diary which details her timetable."

P 6

(p) The final bullet point of paragraph 4 should read –

"... short, daily opportunities of approximately 15 minutes each ..."

(q) The first bullet point is to read –

"F will be provided with weekly direct individual occupational therapy sessions, each lasting a minimum of 30 minutes, ..."

(r) In the second bullet point, delete the words *"implementing an ICT programme"*.

(s) The sentence in the box is to read –

"The OT programme should be revised each term."

(t) The sentence in the box at bullet point 5 is to read –

"The occupational therapist is to provide input for her Individual Education Plan and Annual Review."

(u) The final sentence on the P is to read –

"F will receive 24 hours additional teaching assistance support each week. This should be used as follows:"

P 7

(v) Replace the contents of the box with the following –

"20 hours each week supporting the curriculum, to include the learning support assistant being present for F's sessions with external specialists.

2 hours each week non contact time.

2 hours each week to help F to develop social and physical skills during break times.

This includes all the time specified elsewhere in the Statement."

Dated: 21 July 2010



MICHAEL SHERWIN

TRIBUNAL JUDGE