



## First-tier Tribunal Special Educational Needs and Disability

### DECISION

Appeal No: SE203/12/00028  
Appeal By: Ms S

Against Decision of: Royal Borough of Greenwich, London (LA)

Concerning: Master A  
(born) 1 November 2003

Hearing Date: 5 February 2013  
Tribunal panel: Basil Herwald (Tribunal Judge)  
Robin Attfield and  
Rob Jones

#### Appeal

1. Ms S appeals under section 325 of the Education Act 1996 against the refusal of the LA to make a statement of special educational needs for her son, A

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#### Attendance

2. Ms S attended, represented by Mrs H Israel, Solicitor and called as witness Mr AR, Education and Clinical Psychologist.

3. The LA was represented by Ms M Bryan, who called as witnesses Ms G Van Der Spiegel, Educational Psychologist, and Mrs G Davies, the “inclusion leader” for M Primary School.

#### Background

4. A is 9 now and has Cerebral Palsy. He has difficulties with learning, fine and gross motor skills, attention, concentration and behaviour. He is in year 4 at M Primary School which is a maintained mainstream school near his home.

5. It seems that a statutory assessment of his needs was requested in August 2011. The LA refused. His Mother appealed. Just before the Appeal was to be heard, the LA agreed to carry out a statutory assessment and finished this in July 2012.

6. As a result, the LA issued a Note in Lieu.

7. A's Mother was not happy with the Note in Lieu, and in essence, wanted the protection of a statement in respect of therapies which A needed, and also was wishing to see A have full time one to one support during the day.

8. In his first term in Reception, A had regular group support to assist with motor and communication needs, but after a marked deterioration in his behaviour, this graduated to one to one support from January 2009 which was said to be successful.

9. In year one, however, the support was reduced to one to two when he shared a teaching assisting with an autistic class peer. The school then reduced this support gradually, reinstating it again for the whole day in year 2.

10. By the time the matter came before us, he no longer received any dedicated TA support.

11. The school witness could not tell exactly how many children were in A's class. She thought it was around 30, and the class contains two children who have statements. In the mornings in this class there is a teacher and two adults who are each supporting the statemented children. There is also "0.5 TA working between two year 4 classes". That person is not present, however, in the afternoons. She had known A from when he first started the school, and although it was she who had originally requested a statement, and she had written on 29 March 2011 that his condition is "complex and life long"... he is already requiring significant support and it is clear that he needs this to be increased to increase his rate of progress and move towards an independent life" nevertheless she felt that the "note in lieu" was appropriate.

A's Mother told us that A often is up from 4.00am and can wake up at several times in the night, with leg pain. She drives him to school for an 8.55am start and school ends at 3.30pm. She describes his behaviour at home as "nightmarish". She says he is very frustrated; she cannot get him to do the homework which she feels needs to be differentiated, which is not the case now. She told us that "in school he is not getting what I think he should get". Ms S was bolstered, she said, in her belief that he needs a statement, because A's class teacher (who was not available to give evidence today, and who had not provided witness evidence) had told her at a parents' evening before Christmas 2012 that "it would make her life a lot easier if he were statemented". Ms Davies told us that the class teacher had expressed similar sentiments, to her.

12. Ms S also told us that she had recently found her son "wandering round the school, and then by the school gates which were open gates and she was worried about his safety". She went on to tell us that only yesterday, she had received a phone call from the new Head Teacher. Her son had been found, by another teacher, in a toilet with a child who has ASD, and both were touching each other inappropriately. So far as Ms S was concerned, this was further evidence as to why her son needed a statement, because he needed someone with him at all times.

13. We reminded the Representatives that we would be relying in particular on the code of practice, paragraph 8.8 et seq.

14. As well as the above evidence, we also heard from the LA educational psychologist, Ms Van Der Spiegel. The thrust of her evidence was that A had a good start to year four, building on progress in year 3 and a recent meeting to assess the notice in lieu, had gone well. This LA could be relied on to “pull everything together” and provide the necessary therapies and specialist advice.

15. The other witness was Mr AR, who has met A twice. We were grateful to both experts for their cogent and succinct contributions to the hearing.

#### Tribunal’s conclusions with reasons

16. We carefully considered the written and oral evidence and took into account the Code of Practice and the relevant sections of the Education Act 1996 and the SEND Act 2001 and our conclusions are as follows:-

17. On 29 March 2011, the witness Ms Davies wrote a potent report about A, as part of his formal assessment. She was right to describe his condition as “complex and life- long”. This is clear from the variety of interventions which had been required and the diagnoses. The cumulative effect of this complex pattern of needs on his ability is exceptional. She went on to say that A had already required, and would continue to require “specialised interventions, differentiated planning and expensive resourcing (eg specialist seating)...”

18. Her views were borne out by the evidence of other experts who have met A. The LA EP did not dissent from this analysis. Her argument was that the note in lieu was “very detailed and clear”. We do not accept that the note in lieu is either detailed or clear, however and we are persuaded that in view of his enormous difficulties, and the variety of interventions he requires and will require in the future, he needs the protection of a statement.

19. The evidence leads us to the conclusion that there are aspects of the child’s learning difficulties which may have been overlooked and which have not, and cannot be addressed through school action or school action plus. We bear in mind that this view accords with that held by A’s class teacher, the person who, of everyone in the school, knows him best. This is, in itself, cogent evidence.

20. We were impressed by the evidence of Mr AR. He himself told us that he had been left “irate” at the refusal of the LA to provide A with a statement. It must be said that he elaborated for us, in a most helpful way, A’s innate difficulties. Mr AR has been dealing over some time with a clinical negligence claim on behalf of Ms S. He has assessed A twice. He told us that A has neurological damage, which leaves him impulsive. He shows ADHD characteristics as part of his dysexecutive functioning. In short, his neuro-psychological difficulties will not be remediated. In terms of verbal

comprehension, A's vocabulary may look good on paper, but his scores in testing in respect of information processing are very low. We accept the evidence of Mr AR to the effect that A "needs things to be taught to him because he has significant memory deficits and scores very low in comprehension. One may be misled in believing that he has progressed in language across the board, but this simply is not the case". Mr AR was able to explain to us how A's "enormous deficits can be masked by his access to vocabulary". A, he pointed out, "does not understand social situations, cannot make inferences or anticipate. He simply cannot be taught these things because he has brain damage".

21. To comply with the Code of Practice, the LA sought to persuade us that A has made "good progress in the last year". Thus they pointed out that his scores in both reading, writing and numeracy had improved throughout year

3. On paper, this was indeed the case and the LA was impressed that although A was hard to teach because of behavioural problems, he now seems to have "taken off despite the fact that he no longer had two to one support".

22. For us, Mr AR put this assertion into perspective. We accept his analysis that "progress, in terms of reading accuracy may be assessed, but A is not in effect amassing vocabulary which he can use. He does not put things together, he has great difficulties in abstract conceptualisation and therefore in relative terms, globally he was only of low average in 2009 and now he presents as having moderate learning difficulties". We accept Mr AR's evidence that as A gets older, his assessment scores in formal psychometric testing will in fact get lower. The Notice in Lieu does not look overall at A's global deficits and Mr AR put it very plainly... "you cannot bolt on physiotherapy, SLT, specialist teaching support, he needs an OT programme, for example, implemented in school. The Notice in Lieu does not address IT assessment or support and without a comprehensive statement, A will not get the holistic support he needs".

23. We looked carefully at the Notice in Lieu. There was little in it which was either quantified or specified, and the Notice in Lieu does not tell the reader how programmes are to be put in place for A. This may be left to a TA, but if there is no TA dedicated to A, we are unclear as to how such programmes could be made to work.

24. The written evidence from OT and physiotherapists, was extremely persuasive. Assessments had taken place over a number of years. There are constant references to A finding it hard to progress without adult support:- Identical concerns are expressed through years 1,2,and 3, and OTs note less access to TAs at key stage 2 for example. A joint physiotherapy/OT report in June 2012 recommends that the "TA/Class Teacher is to liaise with Therapists..." so that programmes are put into place, and yet at present, A has no such person who is, to put it bluntly, looking out for him. A similar pattern emerges from reading through the SLT reports. Indeed, in May 2012,

the SLT (page 71 of the bundle) recites that A's overall receptive and expressive language scores only on the 2<sup>nd</sup> centile. Thus A's ability to access the curriculum is severely limited. The SLT, Ms H, reiterates these needs as late as December 2012, some time after the Notice in Lieu has been put in place. The reader will therefore gather that we are not reassured by the Notice in Lieu, and our fears are bolstered by other evidence which came forward.

25. We accept Ms S's evidence to the effect that she found A wandering at the school gate unattended, and we accept the evidence of all those who told us what had happened the day before the hearing, when A was found in a toilet with another child. It is plain to us that the school failed A on both occasions. The LA evidence was that "these things happen". Ms S takes the view – and we accept this – that such things would not happen were A to benefit from one to one support.

26. Such support, if needed cannot be achieved through the Note in Lieu. The suggestion that it might be, was, in fact, given the lie by the LA witness Ms Davies. The LA representative told us that the LA delegates funding for schools for up to 20 hours one to one support a week, but Ms Davies states quite clearly that the school could not provide that from its present budget or under school action or school action plus because of "difficulty with funding". Frankly, this is the nail in the coffin of the LA argument. There are, thus approaches which with the benefit of advice, the school could effectively adopt, but not within its own resources, given the evidence of the LA itself here.

27. Ms Van Der Spiegel sought to persuade us that Greenwich has an extremely good relationship with local NHS Services, and that A would therefore not require the protection of a statement to access therapies. And yet, we were told that in July 2012, the school had referred A to something called "Steps". This stands for Support Team for Education In Primary Schools. That is not an NHS service, it is provided by the LA itself. To our surprise, we learned, however, that nobody had yet assessed A from that team, seven months after the referral. Thus, services had not yet managed to prepare a multi-sensory approach to develop A's literacy skills, lending credibility to the claim by A's Mother that he needs the protection of a statement. His needs are complex and life long. He will need a level of support which is more than school can provide at present. It seems that he needs a TA to focus on programmes tailored to meet his specific needs. This is not available to him at present. A sort of "key worker" will be needed for A to put in place all the various therapies. Much as we applaud the work done by A's school thus far, he needs the LA to arrange a statement for him.

Order

Appeal allowed.

It is ordered that The Royal Borough of Greenwich shall now issue a Statement

of Special Educational Needs for A.

Signed:



Basil Herwald  
Tribunal Judge  
Issued On: 27 February 2013