

This case study is a case summary, and has been developed solely as a training tool for the purposes of the DfE/IPSEA SEND Decision Making and the Law Workshops, delivered in Autumn 2018

Case Study 1: Refusal to Assess Decision

The legal test for the LA, and hence the Tribunal to apply is set out in section 36(8) of the 2014 Act. The LA must secure an EHC needs assessment for the child or young person if, after having regard to any views expressed and evidence submitted under ss. (7), the authority is of the opinion that:

- The child or young person has or may have special educational needs, and
- It may be necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

The Tribunal considered and followed the guidance contained in paragraph 9:14 of the Code. In particular it considered evidence of Fay's progress, the action taken by the school, and evidence as to Fay's physical, social, emotional and health needs.

The Tribunal concluded that the legal test set out in Section 36(8) and the advice contained in the Code must be the basis of the decision to be made and not the LA's own guidance and criteria for assessment. It noted the LA appeared to have argued that if the child did not have extreme difficulties, or the school did not appear to be able or willing to implement SEN Support, an assessment was unnecessary. Notwithstanding the caveat that the guidance criteria were not meant to be prescriptive, the decision makers appeared to have relied on the criteria in the guidance rather than the legal test in their decision making. It was accepted by the school that Fay has special educational needs primarily in the area of cognition and learning. However, the Tribunal decided that, on the evidence, the extent of her special educational needs (and the provision required to meet them) was at this point not fully understood and that further assessment would be required to understand this. It was not clear that the school was implementing the right support, but it was also unclear whether, once understood, Fay would require special educational provision to be secured through an EHC plan. The Tribunal found that Fay had made some progress, but it was clear that progress was minimal. The Tribunal rejected the LA's submission that Fay's needs were clear.

The Tribunal noted the issues of her ASC assessment; the report from the social communication team and the specialist Speech and Language therapist were still outstanding. In addition, whether she has a specific learning difficulty and the extent of and the provision to meet her visual integration issues was unclear and had not been sufficiently investigated. Furthermore, there was evidence that Fay was only able to attend school on a reduced timetable and when support from an adult, in addition to the class teacher, was available. The Tribunal was not satisfied that it could be said that Fay's needs could be met by the budget of any of the LA's mainstream schools

For a combination of the above reasons, namely:

- the lack of clarity in knowledge of Fay's difficulties,
- no evidence of real progress from the support from her school,
- the possible need for specialist teaching or programmes, and
a doubt as to whether her needs could be met from the budget of a mainstream school,

the Tribunal was satisfied that a full assessment might show that an EHC plan may be required to meet Fay's needs.