

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 Workshop, delivered in Autumn 2019

### **Case Study 1: Decision - Refusal to Assess**

The legal test for the Tribunal to apply, and therefore the LA, is set out in s.36(8) CFA 2014. 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 s.36(7) CFA 2014, 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 SEND CoP 2015. 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 s.36(8) CFA 2014 and the advice contained in the SEND CoP 2015 must form 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 relating to her ASC assessment – in particular, an assessment by a speech and language therapist was 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, Fay was currently unable to attend school, indicating that she required more support. The Tribunal was not satisfied that Fay's needs could be met from within 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.