

### **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 new Code. In particular it considered evidence of Fay's progress, the action taken by the school, and in particular considered 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 a child did not need more than 20 hours of support a week an assessment was unnecessary. This appeared to be a blanket policy which is totally inconsistent with the provisions of paragraph 9.16 of the Code.

It is accepted that Fay has special educational needs primarily in the area of cognition and learning. She receives some 16 hours of support a week in a very small school with small classes and above average amount of children with SEN and staff experienced in dealing with such children.

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.

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: indeed the evidence of her previous placement suggested otherwise.

Assessment may show that Fay needs either specialist teaching or specialist programmes to overcome her difficulties in acquiring literacy and numeracy skills.

For a combination of the above reasons, namely:

- the lack of clarity in knowledge of Fay's difficulties,
- no evidence of real progress despite intensive 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,

*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 January and February 2017.*

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