

## **Case studies, drawn from research and tribunal records**

### **Case study 1: Tribunal overturned local authority's placing request decision**

Isabella Smith was a 12 year old girl and had profound bilateral sensorineural deafness. She received a cochlear implant eight years ago. Speech had not developed and she was reported as having a speech and language disorder. She was diagnosed as having oral dysphasia as well as a sub mucus cleft palate. In addition to her hearing impairment she had an absent left kidney and other medical issues. She used British Sign Language to communicate although her vocabulary was not extensive. BSL was central to her learning.

The child was in P7 and attended an education authority primary school which was not her local primary school, but was the one recommended by the education authority when she started nursery as they have a support unit for hearing impaired children. A placing request was made for an independent specialist school for deaf children and/or those with a severe speech impairment. Due to the distance of the school from the child's home this would require to be a residential placement with the child staying at the school for four nights each week.

This placing request was refused by the education authority for the following reasons:

- In terms of the Education (Additional Support for Learning) (Scotland) Act 2004, the formal grounds for refusal were that the specified school was not a public school and the authority was able meet the child's needs in a maintained school. The requested placement would therefore involve unreasonable expenditure.
- In refusing the placing request, the education authority also referred to its legal obligation to comply with the 'presumption of mainstreaming' (Section 15 of the Standards in Scotland's Schools etc. Act 2000) which acknowledges the importance of children and young people growing up as a part of their local community. To place the child at the specified school, the education authority would be in breach of its duty to provide mainstream education.

The child's latest report card stated that she had achieved level A for listening, talking and writing skills, and for reading she was still working within level A. For other subjects she had achieved level B.

The school that the local authority proposed that the child attend is a local authority high school and the child would be the first non-oral deaf child to attend. The teacher of the deaf presently based there was not yet qualified and only three staff had any signing skills. The Smiths were strongly of the view that this school would not help their daughter to progress either academically or socially.

The child's own view on the placing request was that she would like to attend the specified school as everyone can sign, enabling her to communicate with everyone. She believed that she would feel more included in the school setting as opposed to the exception in a mainstream setting. She was very keen to take up a residential placement, and although this would separate her from her family for 4 nights each week, she was aware of the technology available to her in the residential unit to keep in touch (Webcam, email, mobile phone text). She also realised that she would be home with her family from Friday afternoon to Monday morning.

The Tribunal overturned the decision of the authority, which was required in the special residential school. The authority was required to amend the child's co-ordinated support plan accordingly and to specify that the placement would be residential,

## **Case 2: Placing request and extensive informal negotiation managed by parent**

The McIntosh's son, Fraser, was 15 years of age and had a diagnosis of autistic spectrum disorder. His parents, both professionals, worked from home in order to combine work and childcare. Fraser was placed in a special school, but during his teenage years his difficulties became more apparent, with attendant stresses for his family and teachers. His mother became convinced that school staff did not have the specialist training to manage his behaviour effectively. She researched the options independently, and eventually decided that placement in a residential independent school would best meet her son's needs, although she knew the council was unlikely to agree because of the cost. Mrs. McIntosh made a formal placing request, with a view to taking the case to tribunal as a last resort. Following advice from an advocacy organisation, Mrs. McIntosh took on the role of lead professional and, prior to a review meeting, had private meetings with all professionals involved with Fraser. Each confirmed in writing that Fraser's current school could not meet his needs, and that a residential special school placement was required. The placing request was granted, although the senior officer continued to maintain that the local authority was able to meet the child's needs and that cost of the residential placement was unjustified and detrimental to other children's education because of its resource implications. This view was reinforced by the educational psychologist, who spoke of the danger of middle class parents claiming more than their fair share of resources for their children. Mrs McIntosh was clear that, had the placing request not been granted, she would have appealed.

## **Case 3: Tribunal found in favour of local authority, but positive experience overall**

Mrs McFall's daughter, Amelia, was identified as having Asperger's Syndrome at primary school. Her mother, a Scottish nurse, was concerned about how her daughter would fare at secondary school, and was worried about bullying. She decided that in order to obtain a place at a special unit, it would be necessary to have a CSP, and therefore requested that an assessment be carried out. However, the local authority was extremely slow to respond and eventually refused the request for a CSP. Mrs. McFall decided to make a reference to the ASN Tribunal because she was advised by an advocacy group that this was the best means of getting the local authority to take her concerns seriously. She also considered mediation, but was told by other parents that *'you get nowhere, they're just a way of placating parents'*. The educational psychologist believed that if the Council had communicated with Mrs. McFall more openly, the appeal could have been avoided because she was not by nature a disputatious person.

Mrs McFall described the tribunal as friendly at one level, but like a court at another, where words could be twisted. She said that having to put her case and being asked questions was challenging. Interestingly, Mrs. McFall was challenged for not having brought her daughter to the hearing, but she felt that this would have been unhelpful and upsetting. Ultimately, Mrs. McFall felt that little had been achieved by using the tribunal. However, she was aware that when Amelia went into the mainstream secondary school, the local authority and the school ensured that she received transport to and from school, and additional attention from the learning support teacher. This help, she believed, was only provided because the local authority wanted to ensure that the placement would work out well.

## Questions

What do you think are the main issues arising in each of these case studies and have you encountered such issues?

In each case, what are your thoughts on the local authority's course of action?

Could mediation have played a role in any of these cases?