

SEN APPEAL SUCCESS

I have recently been instructed by a mum whose son is on the Autistic Spectrum. He is at a local primary school. Prior to her contacting me she had battled to have her son assessed for a Statement of Special Educational Needs.

She came to see me as her son required one to one support whilst he was at school but the Statement was limited to 10 hours support.

I firstly lodged an appeal with the First Tier Tribunal Special Educational Needs and Disability, the appeal was in relation to sections 2 and 3 of the Statement. My client was extremely happy with the school her son was attending and therefore did not want to change part 4.

The matter eventually came before the Tribunal. Unfortunately, due to illness of the LEA representative an earlier hearing date had to be adjourned. I wrote to the Tribunal Service asking that they fix the hearing venue as close as possible to Ulverston in an aim to reduce my client's costs. The Tribunal very kindly agreed and the matter was heard in Kendal saving all parties lots of travel.

The case that I presented to the Tribunal was that amendments were required to part 2 and part 3 of the Statement. I required more specific details in relation to the child's disabilities and requirements and therefore in part 3 the provision required to ensure that the child's requirements were met. In addition, my application was that the child should receive 32 hours support on full-time attendance at school. This was 27.5 hours Teaching Assistant support and an additional 5 hours to cover break times.

The SEN Code of Practice sets out quite clearly that a Statement must be transparent and clear as to what provisions are required. The Education (Special Educational Needs) (England) (Conciliation) Regulations 2001 also state that a Statement must specify "any appropriate facilities and equipment, staffing arrangements and curriculum". These points are not new to a Tribunal and therefore there was Case Law supporting my case.

The evidence given was that the child required one to one support throughout their day at school including lunch breaks. It was put forward on behalf of mum that in break time the child's social needs were addressed which was very much a part of his learning process and therefore did fall under the educational needs of the child.

The school gave evidence, it was confirmed that it was a small school and the child had learnt good behaviours from his peers. He was learning and growing but he needed the extra support.

On coming to its decision, the Tribunal found they preferred the submissions made on behalf of mum. They confirmed our case was made out that full time support was required; they were mindful that part 2 confirmed severe, special educational needs and that these must be met by specific provisions.

The Tribunal found that the appeal was allowed and the Statement was to be amended to include 27.5 hours in class support from the TA based on full time attendance, pro-rata if part time and 5 hours support per week during break times based on full time attendance, pro-rata if part time.

The whole process took eight months from my client first instructing me to the hearing taking place. Unfortunately there was a delay as an earlier hearing date had to be adjourned by 6 weeks but, the process was a long and very difficult time for mum.

Thankfully, the end result ensures that her son now receives the education support that she has strived for and I am glad to have been of assistance in helping her to attain this.

Special Educational Needs is a difficult and complex area. Parents can feel overwhelmed by the process. It is an area of law which I enjoy and specialise in and aim to assist my clients to ensure that their children receive the best education they can.

If you have any concerns in relation to obtaining a Statement for your child or wish to discuss the content if your child has already been statemented, then please do not hesitate to contact me and I will assist and advise you. I can liaise with the Local Authority to try to resolve matters, if required, I can appeal on your behalf and attend with you at a Tribunal hearing.

Sarah Swarbrick

Livingstons Solicitors

57-61 Market Street

Dalton in Furness, LA15 8AW

Telephone: 01229 462126