

IPSEA

Independent Panel for Special Education Advice

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The Secretary of State for Children, Schools and Families
DCSF
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

January 21st 2009

Dear Secretary of State,

Complaint against MBC Solihull under s497 EA1996

IPSEA has recently been contacted for advice by three parents of children who have Statements of Special Educational Needs maintained by MBC Solihull and on examination the children's Statements (all issued or amended within the past six months) share features which in IPSEA's view indicate that the Authority is failing to fulfil their duties :

1. Under s324(1) to 'determine the special educational provision' called for when a Statement is made for a child; and
2. Under s324(3)(b) to 'specify the special education to be made' for a child in a Statement

Statements IPSEA has had sight of all contain the following paragraph:

'The school will make arrangements through their delegated budget to ensure appropriate staffing, training and resources are deployed to secure provision as specified in Part 3 of this statement. Under Solihull's scheme for the delegation of funding for statemented pupils, the LA will allocate a sum of money equivalent to 6.5 units. This is in addition to the resources ordinarily available to the school for children with special educational needs.'

In none of the Statements we have seen is special educational provision specified in Part 3.

1 The lack of specificity.

The judgment of the Court in *L -v- Clarke and Somerset [1998] ELR 129* was that "The real question ... is whether [the statement] is so specific and so clear as to leave no room for doubt as to what has been decided and what is needed in the individual case."

The Special Educational Needs Code of Practice in para 8.37: states that special educational provision should 'normally be quantified in terms of hours of provision,

staffing arrangements' except, exceptionally, by reference to the "changing needs of the child."

2 Delegation of the duty to determine provision

Section 324 EA 1996 gives the LEA the duty to "determine" special educational provision for children for whom it makes Statements of Special Educational Needs and this duty is not delegable to another body, such as a school or the staff of a school.

This aspect of the law has been the subject of clarification by the High Court, as recorded in the judgments in C –v- SENT and Greenwich [1999] ELR 5, and E –v- Rotherham MBC [2002] ELR 266, [2001] EWHC Admin 432.

We communicated our concerns in writing to MBC Solihull on November 24 2008, but have received no substantive comment or response from them on the issues we raised. . We therefore now ask the Secretary of State to use his powers to investigate Solihull's policy with regard to the writing of Statements of Special Educational Needs and to order the Authority to comply, in future, with the requirements of the law.

Yours faithfully,

Jane McConnell
CEO
IPSEA