

Report

on an investigation into
complaint no 11 019 601 against
Lincolnshire County Council

24 October 2013

Investigation into complaint no 11 019 601 against Lincolnshire County Council

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mrs A the complainant
B Mrs A's son

Report summary

Special Educational Needs: post-16 transition planning

Mrs A complains about the lack of transition planning for her son B's transfer from school to further education in September 2012. B has special educational needs.

Early transition planning is essential to allow the Council time to commission any necessary provision and support to meet a young person's learning needs. It is an important step in planning for a young person's transition to adult life.

The investigation found that B left school without any transition planning. The Council failed to ensure that the head teacher produced and updated a transition plan.

The Council failed to produce a Learning Difficulty Assessment when it was clear that B would not meet the admission requirements for his school's sixth form and would be leaving school.

B transferred to college in September 2012 but the placement broke down during the first term.

Finding

Maladministration causing injustice.

Recommended remedy

The Council should review its practices so that the Council ensures children with special educational needs have transition plans.

The Council should make arrangements to support B in further education or training until he is 26 if he chooses to remain at college. The Council should provide equipment or resources for B's education to the value of £1,000.

The Council should pay Mrs A £500 for the additional stress of having to make arrangements herself with the college to support B following his transfer from school.

The complaint

1. Mrs A complains about the lack of transition planning for her son B's transfer from school to further education in September 2012. B has special educational needs (SEN).

Legal and administrative background

2. Local authorities have a statutory duty to identify, assess and make provision for children with special educational needs¹. The Secretary of State for Education has made regulations² and issued comprehensive guidance³ which local authorities must follow.
3. Children with a learning difficulty which calls for special educational provision to meet their needs are eligible for a Statement of Special Educational Needs (a statement). A statement is a legally binding document which identifies their needs and sets out how they will be met.
4. The local authority must carry out an annual review of a child's statement⁴. Transition planning must be part of the annual review from the tenth year of a child's compulsory education (Year 9) and each subsequent year until the child leaves school⁵. The head teacher must produce a transition plan which the local authority must review and send to the child's parents.
5. A transition plan must set out arrangements for special educational provision, suitable employment, accommodation, leisure activities and any other necessary provision to facilitate a satisfactory transition from childhood to adulthood⁶.
6. Local authorities are responsible for the statements of children who attend a school up to the age of 19. Children can leave school and continue their education at a further education college. A statement ends when a child leaves school and is replaced by a Learning Difficulty Assessment if the young person remains in education or training.
7. Local authorities have a statutory duty to assess the needs of young people with special educational needs who they believe will leave school at the end of their last year of compulsory education and continue their education in a further

¹ Education Act 1996, Part IV

² The Education (Special Educational Needs)(England)(Consolidation) Regulations 2001

³ The Special Educational Needs Code of Practice, Department for Education & Skills, 2001

⁴ Education (Special Educational Needs)(England)(Consolidation) Regulations 2001, regulations 18 & 20

⁵ Education (Special Educational Needs)(England)(Consolidation) Regulations 2001, regulation 21

⁶ Education (Special Educational Needs)(England)(Consolidation) Regulations 2001, regulation 2(1)

education college⁷. The authority must produce a written report of the young person's educational and training needs and the provision required to meet them known as a Learning Difficulty Assessment. The Secretary of State for Education has issued guidance which local authorities must follow⁸. A Learning Difficulty Assessment should clearly identify the young person's needs and appropriate provision that can actually and realistically be provided to meet them⁹.

8. Local authorities must find a school or college place for all 16 – 19 year olds who want one. Local authorities must provide support to young people with learning difficulties who remain in further education or training until they are 25.

The Ombudsman's role and powers

9. My role is to investigate complaints of administrative fault ('maladministration') or service failure by Councils (and some other public bodies) brought by or on behalf of individuals who claim to have suffered injustice¹⁰.

Investigation

10. My investigator has discussed the complaint with Mrs A. He has considered information in the Council's files and the Council's response to his enquiries. He has taken account of both Mrs A and the Council's comments on a draft of this report.

What the investigation found

Background

11. Mrs A's son, B, had a Statement of Special Educational Needs maintained by the Council. He attended a mainstream secondary school where he received 32.5 hours per week of enhanced adult support. B was taught in a class one year behind his chronological age.
12. A Connexions Adviser¹¹ attended the annual review meeting for B's statement in January 2010. This was the tenth year of B's compulsory education (Year 9). The minutes do not record any discussion of transition planning.

⁷ Education & Skills Act 2008, s80

⁸ S139A Learning Difficulty Assessments Guidance for Local Authorities, Department for Education

⁹ *Alloway v London Borough of Bromley* [2008] EWHC 2499 Admin

¹⁰ Local Government Act 1974, s26A(1)

¹¹ The Education (Special Educational Needs)(England)(Consolidation) Regulations 2001, regulation 21(6)(d) requires the head teacher to invite a representative from Connexions, the Careers Service, or other person with appropriate knowledge and expertise to the annual review meeting to advise on transition planning in the tenth and subsequent years of a child's compulsory education.

13. A Connexions Adviser and a specialist SEN Connexions Adviser attended the annual review meeting in January 2011 when B was in Year 10. The minutes record some discussion about transition, but there was no agreement on a plan. The Connexions Adviser told Mrs A that Connexions had to prioritise Year 11 students who are job seeking or moving on.
14. The school held an annual review meeting in November 2011 when B was in Year 11. There was considerable discussion about transition at this meeting. The school confirmed that B's predicted exam results would not meet the entry requirements for the school's sixth form. There was some discussion about further education college courses, but no transition plan was produced.
15. B moved to a further education college in September 2012 without a transition plan or Learning Difficulty Assessment.
16. Despite the efforts of Mrs A and the college to meet B's needs, his placement broke down.

How the Council planned for B's post-16 education

17. The Council says that it discussed a number of options for B's post-16 education with Mrs A. The Council says that it did not know that B was leaving school and going to college until the college contacted the Council to ask for B's Learning Difficulty Assessment in September 2012.
18. The Council says that, in common with other local authorities, it considers transition planning to be the responsibility of the school, not the Council.

Conclusions

Transition planning

19. When a child is in his tenth year of compulsory education, the regulations¹² require:
 - a. the local authority to serve a notice on the head teacher requiring him to convene a meeting and invite a number of people, including the local authority, to review a child's statement (21(6)) and to submit a written report (21(2));
 - b. the meeting to recommend matters to be included in the transition plan (21(9)(c)) which the head teacher will include in his report (21(11));
 - c. the local authority, on receipt of the head teacher's report, to review the Statement and make written recommendations on matters including the transition plan (21(13)); and

¹² Education (Special Educational Needs)(England)(Consolidation) Regulations 2001

- d. the local authority to send a copy of the transition plan to the parents, head teacher and any other appropriate person (21(14)).
20. In subsequent years, the regulations require:
- a. the local authority to serve a notice on the head teacher requiring him to convene a meeting and invite a number of people, including the local authority to review a child's statement (20(6)) and to submit a written report (20(2));
 - b. the meeting to consider the transition plan (20(8)(a)) and make recommendations for its contents(20(9)(c)) which the head teacher will include in his report (20(11));
 - c. the local authority to review the Statement and make written recommendations on matters including the transition plan (20(13)); and
 - d. the local authority to send a copy of the transition plan to the parents, head teacher and any other appropriate person (20(14)).
21. The head teacher is responsible for ensuring that a transition plan is drawn up (21(15)) and any necessary amendments to the transition plan are made (20(15)).
22. No transition plan was produced for B. A transition plan should have been produced in 2010 and reviewed at the two subsequent annual reviews.
23. The Council said it believes transition planning is the responsibility of the school, not the Council. While the head teacher is responsible for drawing up the transition plan and making any necessary amendments, the Regulations make it clear that the Council is responsible for initiating and coordinating the process.
24. The Council was invited to annual review meetings when B was in Year 9, Year 10 and Year 11 at which it was required to consider and make recommendations about matters which ought to be included in his transition plan.
25. Following the meetings, and on receipt of the head teacher's report, the Council was required to review B's statement and make written recommendations for amendments to the transition plan as it considered appropriate.
26. The Council was required to send a copy of the transition plan to the parents within one week of completing the review.
27. The Council failed to perform these functions.
28. The Council has a general duty to make effective arrangements for children with special educational needs. The SEN Code of Practice says that strategic planning in consultation with schools to develop systems for monitoring and

accountability for SEN is an essential function of the Council in order to make effective arrangements for SEN¹³.

29. I find the Council was at fault because it failed to have an effective system to monitor the arrangements for annual reviews to ensure that the head teacher produced and updated a transition plan for B. Since transition planning is a statutory requirement of the review from Year 9, I find the Council failed to make effective arrangements for B's special educational needs.

Learning Difficulty Assessment

30. The Local Authority has a duty to carry out a Learning Difficulty Assessment during a child's final year of school if it has reason to believe that the child will leave school at the end of his compulsory education to continue to receive post-16 education¹⁴.
31. It was clear from the discussion of B's predicted exam results at the November 2011 review of his statement that he would not meet the entry requirements for the sixth form and so could not remain at the school. Nevertheless, the Council named the school¹⁵ when it issued B's revised statement in May 2012.
32. The Council should have planned alternative provision to meet B's learning needs. Its failure to do so is further evidence of the Council's failure to have in place an effective system to monitor the arrangements for special educational needs, and in particular the annual reviews of children approaching transition.
33. It is likely that B met the criteria for a Learning Difficulty Assessment in his final year at school, and had the Council made effective arrangements for his Year 11 review, the Council would have produced a Learning Difficulty Assessment before B transferred to college.
34. B transferred to college in September 2012 without a Learning Difficulty Assessment.

The injustice

35. A transition plan is not simply an operational document. It is intended to draw together information in order to plan coherently for the young person's transition to adult life¹⁶. The Council failed to ensure a transition plan was produced for B.

¹³ The Special Educational Needs Code of Practice, Department for Education & Skills, 2001, paragraph 1:11

¹⁴ Learning and Skills Act 2000, s139A(1)

¹⁵ The Council must name a school or type of school at which it considers a child can receive a suitable education in Part 4 of a Statement of Special Educational Needs.

¹⁶ Special Educational Needs Code of Practice 2001, paragraph 9:51

36. Early identification of those requiring a Learning Difficulty Assessment is essential to allow time for the commissioning of any necessary provision and support to take place¹⁷. The Council failed to identify that B required a Learning Difficulty Assessment until he had already started at college.
37. Although Mrs A and the college tried hard to meet B's needs, his placement broke down. The Council missed the opportunity to commission any necessary support before B started his college course. B will have to repeat his first year at college.

Recommended remedy

38. The Council should review its practices so that the Council ensures children with special educational needs have transition plans.
39. The Council should review B's Learning Difficulty Assessment and make arrangements to support B in further education or training until he is 26 if he chooses to return to college.
40. The Council should provide equipment or resources for B's education to the value of £1,000.
41. The Council should pay Mrs A £500 for the additional stress of having to make arrangements herself with the college to support B following his transfer from school.



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¹⁷ S139A Learning Difficulty Assessments Guidance for Local Authorities, DfE