**DECISION OF THE TRIBUNAL**

**HEC/AR/21/0106**

**Reference**

1. This is a reference in respect of a Co-ordinated Support Plan (‘CSP’), made by application dated October 2021. It is made under s18(1) and s18(3)(d)(ia) of the Education (Additional Support for Learning)(Scotland) Act 2004 (‘the 2004 Act’). In making the reference, the appellant asks the tribunal to require the respondent to make provision for the additional support identified in the CSP, namely the provision of a BSL Tutor.

**Decision**

1. I uphold the reference and find that the respondent has failed in terms of section 18(3)(d)(ia) of 2004 Act, on the basis of a failure by the respondent to make arrangements for the provision of the additional support specified in the child’s CSP in respect that the respondent failed to make provision of a BSL Tutor to the child.
2. I require the respondent to make provision for the child of a BSL Tutor, in accordance with the contents of the child’s CSP and the draft job description lodged at R002 - 003 by the end of May 2022 or by such other date as is agreed by the parties. In addition I require the respondent to make amendments to the child’s CSP to specify and quantify the required input from the BSL Tutor in the CSP by 30 April 2022, or by such other date as is agreed by the parties.

**Process**

1. The reference was received by the Tribunal in October 2021.
2. Case management hearings took place in December 2021, February and March 2022. At the case management call in December 2021, the respondent accepted that there had been a failure by the education authority to provide for the provision of a BSL Tutor as required as part of the CSP. Further case management hearings took place as progress was anticipated in the respondent providing for the provision of a BSL Tutor as required as part of the CSP. By March 2022 the respondent had not provided for the provision of a BSL Tutor as required as part of the CSP and the appellant sought that a decision be made. Both parties agreed by email to dispense with a hearing. Accordingly, in terms of Rule 37 (2)(d) of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, Schedule to SSI 2017/366, with the agreement of the parties, I determined the reference as a legal member sitting alone.
3. In reaching the decision and making the findings in fact stated below, I am relying on the documents submitted by the appellant, the response to the reference, and the case statements contained within the bundle T001-T033, A001- A002 and R001- R003 together with the written submissions lodged by the appellant and respondent. I have also considered supplementary oral submissions that were made. No oral evidence was heard. The facts of the case contained within paragraphs 7 to 12 are not disputed.

**Findings in Fact**

1. The appellant is the mother of the child.
2. The child was born in January 2011. He is 11 years old.
3. The child is profoundly deaf, with a related delay in the acquisition of language skills. Late diagnosis had an impact on his speech and communication development.
4. The child requires a CSP. In May 2021, the authority prepared a CSP for The child.
5. The child's CSP dated May 2021 (T019 – T023) provides for a BSL Tutor from the Deaf Support Team, to provide support required in order to meet the educational objective that the child improve and develop his BSL alongside spoken language skills to allow him to access the curriculum at all times.
6. The respondent has failed to provide for the provision of a BSL Tutor as required as part of the CSP.

**Reasons for the Decision**

1. It is not disputed that the child has additional support needs in terms of Section 1 of the 2004 Act and requires a CSP in terms of Section 2 of the 2004 Act. In May 2021, the authority prepared a CSP for the child.
2. There has been a failure by the education authority to provide, or make arrangements for the provision of, the additional support identified within the plan in terms of s18(3)(d)(ia) of the 2004 Act. This is not disputed by the authority, and they have confirmed that they are not resisting the reference. In terms of s19(3) of the 2004 Act, the Tribunal “may require the education authority to take such action to rectify the failure as the First-tier Tribunal considers appropriate by such time as the First-tier Tribunal may require.” The appellant submitted that I should require the respondent to make provision for a BSL Tutor, in accordance with the contents of the CSP and the draft job description lodged at R002-003 within one month. The only dispute between the parties was in relation to the time period within which the respondent should be required to make provision for the child of a BSL Tutor. The respondent submitted that one calendar month to recruit the BSL Tutor specified in the job description at R002-003 was highly unfeasible and that the respondent had made best efforts to recruit an interim alternative without success.
3. The date the CSP was made was May 2021. It has been almost a year that the obligation on the respondent to make provision of a BSL Tutor has been upon the respondent. The failure to make provision of a BSL Tutor has persisted. In light of this but having regard to the respondent’s submissions I am of the view that a period of two calendar months is appropriate.
4. The appellant asked that I require the respondent to amend the CSP to specify and quantify the required input from the BSL Tutor in the CSP by the end of April 2022. Neither the CSP itself, nor the draft job description at R002-R003 specify the frequency or level of input required from the BSL Tutor. Instead, the input is framed in terms of the desired outcome. The appellant was in agreement with this. In terms of s19(3), the Tribunal “may require the education authority to take such action to rectify the failure as the First-tier Tribunal considers appropriate by such time as the First-tier Tribunal may require.”. The powers of the Tribunal in this regard are broadly framed and in the circumstances of this case it is appropriate that I use these powers to require the respondent to amend the CSP as sought by the appellant.