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DECISION

Date of Birth: 2005
Appeal of: The Parent
Type of Appeal: Against the contents of a statement of SEN
Against the Decision of: Local Authority
Date of Hearing: 2012

Persons Present:

Parent	<i>Parent</i>
Parent Representative	<i>Representative</i>
Parent Witness	<i>Witness</i>
Local Authority Representative	<i>Representative</i>
Local Authority Witness	<i>Witness</i>
Local Authority Witness	<i>Witness</i>

Appeal

1. The Parent appeals under s.326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs issued by the Local Authority in respect of their Child. The Statement is dated September 2011. The appeal is in respect of Parts 2 and 3 of the Statement.

Preliminary Issue

2. The Parent applied to admit late evidence under s. 33 (2) of the Special Educational Needs Tribunal Regulations 2001 in respect of an updating report from Speech and Language Therapist dated 3 January 2012. The report was submitted to the Tribunal and served upon the Local Authority on 3 January 2012. The Local Authority did not object to the admission of the report. The Tribunal decided to admit the report as it considered that the criteria set out in s. 33 (2) of the Regulations were met.
3. The Local Authority applied to admit late evidence under s. 33 (2) of the Special Educational Needs Tribunal Regulations 2001 in respect of an updating report from Local Authority Principal Educational Psychologist dated 12 January 2012. The report was submitted to the Tribunal and served upon the Parent Representative, on 12 January 2012. The Parent Representative did not object to the admission of the report. The Tribunal decided to admit the report as it considered that the criteria set out in s. 33 (2) of the Regulations were met.
4. The Tribunal was provided with Versions 2, 3 and 4 of an agreed working document. The Tribunal received these documents by 12 January 2012. The Tribunal decided that the conditions set out in Regulation 33 (2) of the Special Educational Needs Tribunal Regulations 2001 were met and therefore it admitted these documents as evidence.

Facts

5. The Child was 7 years old at the time of the hearing.
6. The Child was diagnosed with Autistic Spectrum Disorder (ASD) by the local Autistic Assessment Service Panel in July 2008. As a result of having ASD the Child has significant difficulties in their social interaction, communication and in aspects of their behavior. The Child tends to be a passive child and the Child prefers to follow their own agenda if allowed.
7. The Child generally has difficulty with focus and concentration. In a report of the 12 January 2012 it was stated that school staff said that the Child is able to engage in learning activities for between 5 – 10 minutes at a time, although this can be extended if the Child is engaged in a task that involves one of their particular interests. This is supported by the undated report of The Speech Clinic set out in the Bundle where it is reported that one of the speech therapy goals was to “strengthen the Child’s attention skills to enable the Child to engage in an adult-led task for 10 minutes.”
8. The Child has significant expressive and receptive language difficulties. The parties agree that the Child’s speech sound development and expressive language are severely disordered and that the Child’s receptive language is severely delayed. As yet the Child has no consistent functional communication system. The Child uses a variety of methods to communicate their needs. The Child uses physical prompts such as hand pointing, bringing items to the attention of an adult or directing an adult to things by pulling them. The Child is vocalizing and uses utterances and sounds. The Child can say some single words such as “Bye” and can use the correct letter sounds to identify single words such as “t” for toilet and “d” for dinner, but the Child finds it difficult to combine letter sounds together to make full words. The Child is also able to communicate using PECS. The Child is reported to understand a number of single words and to be able to follow basic instructions in structured situations and with visual support.
9. Due to the above difficulties it has not as yet been considered possible to carry out any formal psychological assessment of the Child’s underlying cognitive functioning.
10. It is agreed that the Child has some gross motor skill difficulties and difficulties with motor accuracy. It is also agreed that the Child has a number of difficulties with fine motor control skills.
11. There is evidence from both sides to indicate that the Child has sensory difficulties. The Parent reported to the Tribunal that at home when “hyper” the Child will run around touching the walls, the Child also clutches their chin frequently and will give the Parent and other family member’s lots of big hugs. The report from the parentally instructed Occupational Therapist and Sensory Integration Specialist, dated 8 October 2011, states that, “the Child’s performance displays a fluctuation between over and under responsiveness to

sensory experiences.” The report from the Local Authority Witness of January 2012 and the earlier report of a colleague, Local Authority Educational Psychologist, dated October 2011, describe the Child as displaying sensory seeking behaviors during class based observations.

12. In the report of January 2012 it was recorded that the Child sought sensory feedback frequently and that the Child’s main area for seeking this feedback was around the mouth and lower face. It also recorded that the Child would sometimes cover their ears and that the Child would sometimes hum to them self, although in the view of the Educational Psychologist these actions were not automatically linked to the presence of loud noises. The report went on to describe how the Child seemed to enjoy the most colorful and busy pages of a book but how on occasions would respond to the page initially as though it had too much sensory input.
13. The Educational Psychologist also recorded that the Child displays a lot of sensory seeking behaviors; they stated that the Child likes to press their mouth into anything available and the Educational Psychologist reported that the Child covered their ears at certain times and vocalized with initial sounds.
14. The Child attends the ASD Learning Support Class at School A. The School is maintained by the Local Authority. The Child is presently in Year 2. He transferred to the School in September 2011 from the Early Years Learning Resource Centre at Infant School.
15. The Child will need to transfer to a new school in Year 3 as the Learning Support Class only caters for children in Key Stage 1. The parties told the Tribunal that they are already in discussion over this matter and that they hope to be able to identify agreed provision in due course.
16. The Child is reported by their teachers to have settled well into School A. The Parent told the Tribunal that they agree that the Child has settled well and the Parent said they’re generally very pleased with the School and with the staff involved with the Child. Both parties agree that the Child has made progress.
17. The Learning Support Class has 6 pupils including the Child. It is staffed by 2 Teachers who job share the roll and by 2 Learning Support Assistants. The County Advisory Teacher for Autism and Speech and Language, told the Tribunal that all of the staff in the Class have considerable experience of teaching children with ASD. In addition, whilst none of the staff have additional qualifications in Speech and Language Therapy or in Occupational Therapy, the Advisory Teacher explained that staff are used to working with Speech and Language Therapists and Occupational Therapists from the local NHS Services to deliver therapy programmes in school.
18. The Advisory Teacher said that as from January 2012 a local NHS Speech and Language Therapist will be attending School A to provide support to pupils in the Learning Support Class 1 day per week. This will mean that the agreed direct Speech and Language Therapy provision for the Child will start

from the week of 23 January. Occupational Therapy however continues to be provided on a case by case referral basis and any provision considered necessary would continue to be delivered either in a clinic setting or through school based provision. The Advisory Teacher explained that the local NHS Occupational Therapy Service can provide direct therapy provision in school and it can devise programmes for school staff to deliver as necessary. The Service is a generic pediatric service and it does not have specialist provision for sensory integration, although one of the Therapists, who assessed the Child, is currently studying for a post graduate qualification in sensory integration. The Service uses a variety of different strategies when working with children and sensory integration strategies are only one of a number of different approaches used.

19. The Parent explained to the Tribunal that because of the concerns over the Child's speech and language development and because of the motor difficulties and difficulties with sensory integration the Parent has been paying for the Child to receive individual Speech and Language Therapy support and Occupational Therapy support. As a result the Child has been attending the Speech Clinic once per week to receive individual support from a Speech and Language Therapist. This additional support has now ceased. The Child has also been attending the specialist Sensory Integration Clinic to receive blocks of therapy provision during school holidays.
20. The Child has been assessed by the local NHS Speech and Language Therapy Service and by the local NHS Occupational Therapy Service.
21. As a result of pre hearing negotiations the parties were able to agree the majority of issues that were in dispute in respect of Parts 2 and 3 of the Child's Statement. The key area of dispute remained the description of the Child's sensory difficulties and the nature of the support that is required to address these difficulties.
22. It is the contention of the Parent that the Child has significant sensory integration difficulties and that these difficulties need to be reflected in the Child's Statement in line with the description provided a report of October 2011. It is also the Parent's contention that the Child needs are such as to require direct specialist Occupational Therapy provision of 40 hours per year which is delivered in a specialist sensory integration setting and which is delivered by an Occupational Therapist who is qualified to deliver such provision. This level of provision is based upon the recommendation of the Parent Witness. In addition it is contended that the Child requires a school based Occupational Therapy programme to be delivered on a daily basis and close liaison with Occupational Therapists, parents and school staff.
23. It is argued by the Parent with support that the Child has made some small but very significant progress in relation to cognitive skills, social skills and motor skills since taking part in the Sensory Integration sessions. The Parent described how following the sessions the Child has become more ready and

able to engage in physical play, and has become more adept at solving problems for them self and the Child's interests have become wider.

24. The Parent Representative explained that the level of direct specialist provision being recommended equates in rough terms with 1 therapy session each school week. However, in view of the fact that the local NHS Occupational Therapy Service does not as yet have a specialist clinic for delivery of Sensory Integration Therapy nor does it have an Occupational Therapist who has yet completed the postgraduate qualification in Sensory Integration it is proposed that the Child should continue to receive short blocks of therapy during school holidays, either at a clinic or one of the specialist centres. The Parent Witness explained that the therapy blocks are delivered over 3 days for periods of approximately 1 hour 15 minutes each day and they are structured to take account of the Child's difficulties with focus and concentration. The Parent Representative indicated that it was not possible to say how long the provision would need to continue but they accepted that any provision ordered would be subject to Annual Review.
25. The Local Authority argues that as the report from local NHS Occupational Therapists of 28 September 2010 and that of another dated 16 November 2011 do not identify the Child as having sensory integration disorder and as there is not as yet a consensus of expert opinion concerning the condition it would not be appropriate to describe the Child's needs as proposed by the Parent. Further as the NHS Occupational Therapy Service has not recommended that the Child should receive direct provision but has provided a school based programme with review in April 2012 then the Local Authority does not accept that it is necessary to make the direct specialist provision being sought by the Parent. In the view of the Local Authority given the Child's communication difficulties and difficulties with focus and concentration a school based programme of support is preferable because it delivers support in short and frequent bursts. It is the view of the Local Authority that the Child has made progress as a result of the current school placement and as a result of increased maturity. So as to try to resolve this matter by agreement the Local Authority has offered to provide 12 hours of direct Occupational Therapy provision per year (6 hours direct support and 6 hours for review and monitoring).
26. The Child is still very young and communication difficulties are such that it has not been possible for the Local Authority to ascertain the Child's views about this matter. The Parent told the Tribunal that the Child is generally a happy child who likes school. This view is also reflected in the letter from one of the Child's Class Teachers, dated 28 November 2011, which is set out in the Bundle. The Child enjoys watching TV, puzzles, looking at books, playing and eating.

Tribunal Conclusions with Reasons

27. In reaching the decision the Tribunal carefully considered the written evidence submitted by the parties and the evidence given at the hearing. The Tribunal

also considered relevant sections of the Education Act 1996 and supporting Regulations and relevant provisions of the Special Educational Needs Code of Practice.

28. The parties were able to reach agreement over the disputed issues relating to Parts 2 and 3 of the Child's Statement except for the description of the Child's sensory needs and the nature and extent of Occupational Therapy provision needed to address them. The terms of the agreement are recorded in Version 4 of the agreed working document and as agreed during the hearing includes the description of the Child's motor accuracy difficulties and postural difficulties. A copy of Version 4 of the working document is attached to this decision and is marked Appendix A.
29. The Tribunal commended both parties for their willingness to engage in pre hearing negotiation and decided to endorse the agreement of the parties.
30. In relation to the Child's sensory needs the Tribunal decided that it should order the inclusion of the wording sought by the Parent in the Child's Statement. The Tribunal felt that there was clear evidence from both parties, referred to in the Facts above, that the Child currently has considerable sensory integration difficulties that impact on functioning and learning. As such the Tribunal was of the view that these difficulties need to be recorded in the Child's Statement.
31. The Tribunal was of the view that the 2 reports from the local NHS Occupational Therapy Service which the Local Authority has relied upon in drafting the Child's Statement do not fully engage with the issue of the Child's sensory integration difficulties. They record some of the Parents views concerning the Child's sensory difficulties but they do not fully explore documented school based difficulties, and they do not provide any detailed analysis concerning this matter. As such the Tribunal did not find the reports to be useful when determining how the Child's sensory difficulties should be recorded in Part 2 of his Statement. The Tribunal did not accept the argument that this omission may be a reflection of the degree to which the Occupational Therapists felt this issue impacted upon the Child's functioning. The Tribunal considered that this supposition flew in the face of their own evidence and that of the Educational Psychologist concerning the Child's sensory seeking behaviors in school.
32. The wording proposed by the Parent is taken from a report of October 2011. The report is based upon an assessment of the Child in January 2011 and their experience of the Child in subsequent therapy treatment sessions that took place in February, May, August and October of 2011. The report is very technical and unfortunately it does not include an account of the Child's functioning at school but it does deal with the Child's sensory seeking behaviors in detail and is based upon direct first - hand experience of the Child's functioning at intermittent periods over the course of 2011. The Tribunal also had the opportunity to hear from the Parent Witness directly and as a result it was able to test their methodology and evidence base so as to

satisfy itself that the assessment had been thorough, and had taken into account the Child's difficulties with focus and concentration and was based upon an accurate understanding of the Child's difficulties.

33. In reaching the decision the Tribunal bore in mind the assertion from the Local Authority that it could not record the Child's needs in the way sought by the Parent because there is not as yet an expert consensus as to the validity of a diagnosis of Sensory Processing Disorder. The Tribunal acknowledged that a clear understanding of and consensus concerning Sensory Integration Disorders is still developing. However, in the absence of any detailed expert opinion from the Local Authority as to the reasons why therefore it would be inappropriate to refer to this in the Child's Statement and bearing in mind the clear evidence from both parties of the Child's significant sensory seeking behaviors and taking into account the clear expert testimony from the Parent Witness in support of this description of the Child's needs the Tribunal concluded that in this particular case it is appropriate to record the Child's needs in the way sought.
34. Having decided that Part 2 of the Child's Statement should include a description as to the Child's sensory difficulties it follows that the Tribunal decided that the additional objective sought by the Parent relating to this matter should also be included in the Child's Statement. This is in line with paragraph 8:34 of the Code of Practice where it states that Part 3 objectives, "...should directly relate to the needs set out in Part 2."
35. In regard to the nature and level of Occupational Therapy provision that is currently needed to address the Child's sensory integration difficulties the Tribunal decided to order the provision being sought by the Parent. The Tribunal is an evidence based forum and having had the benefit of hearing from the Parent Witness directly the Tribunal preferred the evidence they presented on this matter to that put forward by the Local Authority, namely the 2 reports of local NHS Occupational Therapists dated September 2010 and November 2011.
36. Taking into account the Tribunal's concerns regarding the 2 reports from the local NHS Occupational Therapy Service outlined in paragraph 31 above, the Tribunal considered that the provision recommended in the reports did not deal fully with how the Child's sensory needs should be addressed. The Tribunal did not find the 2 reports useful when determining provision in this area therefore. For the reason outlined in paragraph 31 the Tribunal rejected the argument put forward by the Local Authority Witness that the omission of any detailed recommendations as to provision in this area reflected the possibility that the Occupational Therapists did not consider provision to be necessary.
37. Whilst the Tribunal applauded the Local Authority's willingness to try to settle matters, in regard to the offer of 12 hours of direct Occupational Therapist provision (6 hours individual direct work and 6 hours for review and

monitoring), it agreed with the contention of the Parent Representative that there appeared to be no clear evidence base or rationale behind the proposal.

38. It is agreed that the Child is making progress. Anecdotal evidence from the Parent suggests that there has been small but significant progress in the Child's cognitive skills, social skills and motor skills and this is not disputed by the Local Authority. The Tribunal accepts that this may have come about at least in part because of the Child's current school placement and as a result of increased maturity but it was not prepared to discount entirely the possible impact of the Child's Sensory Integration provision. The Tribunal took the view that it is most probable that the current school placement, staff expertise in ASD, Speech and Language Therapy provision and Occupational Therapy provision, and the Child's increased maturity, have combined together to deliver progress.
39. The Tribunal acknowledged the Local Authority's argument that because of the Child's needs it is preferable for provision to be delivered "little and often" throughout the school day where possible. However, the Tribunal did not accept the contention that this should automatically rule out provision that cannot be delivered in this way. The Tribunal took the view that if this approach was taken, in addition to ruling out direct provision from an Occupational Therapist it could potentially rule out the delivery of direct Speech and Language Therapy provision from a Speech and Language Therapist and the Local Authority has agreed that this is necessary.
40. The Tribunal was satisfied from its questioning of the Parent Witness that the specialist direct provision being proposed is being and could continue to be delivered in a manner that takes into account the Child's difficulties with communication and focus and concentration and impacts as little as possible upon the Child's school attendance. Also the Tribunal felt that the work that any therapist undertakes with the Child could be coordinated to work in conjunction with the agreed school based programme in such a way as to ensure that aspects of the work are followed through into the classroom. The Tribunal was satisfied from its questioning of the Parent Witness that even though the provision needed to take place in a specialist setting it would be possible to coordinate it with school based provision so as to maximize the effect on the Child. The Local Authority Representative, agreed that it would be possible to coordinate any direct work with school based provision.
41. Tribunal was not invited to specify the name of the specialist clinic where the Occupational Therapy provision should take place and it has not done so. The Parent Witness told the Tribunal that the provision could continue if this was considered appropriate and the Tribunal was told that specialist clinics have now been established, although details as to availability of places there was not provided. The Tribunal was satisfied therefore that the type of provision being proposed is available. It will be for the parties to resolve where the provision takes place. As the location of the provision is as yet unresolved the Tribunal decided not to include a reference to the provision being delivered outside term time. The Tribunal did not want this limitation to get in the way of

ensuring that the Child receives the most appropriate provision, but the Tribunal would be concerned if provision were to be delivered in such a way as to mean that the Child was out of school for significant periods of time.

42. In ordering this specialist provision the Tribunal was aware that the intervention is highly specific and focused. In light of this the Tribunal was of the view that the Local Authority needs to be working with any specialist involved to ensure the provision is monitored closely and that the need for the provision to continue should be carefully considered at each Annual Review.

Order

The appeal is upheld in respect of Parts 2 and 3 of the Statement.

- i. By agreement of the parties the Local Authority is to amend Parts 2 and 3 of the Child's Statement in accordance with Version 4 of the agreed working document at Appendix A.
- ii. In relation to the additional amendments sought to Part 2 of the Child's Statement relating to the Child's sensory needs the Tribunal orders that the Local Authority to amend the Child's Statement in line with the description sought by the Parent set out in bold in Version 4 of the working document at Appendix A.
- iii. In relation to the additional amendments sought to Part 3 of the Child's Statement relating to sensory integration provision the Tribunal orders the Local Authority to amend the Child's Statement in line with the changes sought by the Parent set out in bold in Version 4 of the working document at Appendix A.

Dated February 2012

Chair

Appendix A was attached in the Decision