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## **DECISION**

<b>Date of Birth:</b>	2008	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Contents of a Statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of hearing:</b>	2013	
<b>Persons Present:</b>	The Parents	<i>Parents</i>
	Parents Witness	<i>SENCo</i>
	Parents Witness	<i>Class Teacher</i>
	LA Representative	<i>Barrister</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>Head Teacher</i>

### **Appeal**

The Parents appeal under Section 326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs (the Statement) written by the Local Authority in respect of their Child.

### **Decision**

1. The Child was born in January 2008, and presently 5 years of age. The Child attends School A, and is presently in the reception class. The Child is moving to year 1 in September 2013.
2. The Child lives at home with their Parents and 3 siblings, one of whom has experienced similar difficulties to their own.
3. The Child has a diagnosis of Autism and selective mutism. The Child has a Speech and Language programme actioned for them by their Teaching Assistant. The Child has support from a Teaching Assistant for 21 hours per week, which is provided by the local authority, but with an expectation of an additional 5 hours of such support from the school. The school has a delegated budget to cover this.
4. A final Statement of Special Educational Needs was issued in respect of the Child in November 2012. The Parents did not agree with the number of hours of support from a Teaching Assistant, and therefore appealed against the contents of the Statement. Their Appeal Notice sought additional hours of support over the lunchtime break. They were seeking an additional 5 hours support per week. Prior to seeing the Parents' Case Statement, the local authority agreed to provide these additional 5 hours, and incorporated

these into an amended Statement issued in April 2013. In their Case Statement, however, the Parents sought full time one-to-one support for the Child from a Teaching Assistant. Subsequently further amendments were sought elsewhere to parts 2 and 3 of the Statement, as was helpfully set out in a Working Document, which was responded to by the local authority. That document formed the focus for discussions on the morning of the hearing, which enabled the parties to agree all issues save for the number of hours of support that the Child should receive from a Teaching Assistant each week. We thank the parties for resolving all other issues.

5. We have therefore been asked to determine the issue of the number of hours of support that the Child requires per week. In arriving at our decision we have taken into account section 326 of the Education Act 1996, the Special Educational Needs Code of Practice for Wales, and all the evidence that we have read and heard.
6. The parties agree that the Child needs a great deal of adult support in order for the Child to access the curriculum and to manage their anxiety. They also agree that care must be taken to ensure the Child does not develop an overdependence on adult assistance. We have had the benefit of evidence from the class teacher and the school AENCO. They confirm that the Child has made good progress, but requires an adult to facilitate access to the curriculum by breaking down and repeating instructions to ensure the Child understands what is required of them, and to keep the Child on task. They told us that the Child fails to remain on task independently unless it is a self-directed activity, and usually one that the Child has chosen them self.
7. We also heard evidence from the teaching staff that the Child is able to better manage break times now, and a small circle of peers has been cultivated to ease anxiety during these times. The Child is still at the early stages of developing their interaction skills with peers, however. The Child continues to need support over the lunch break to facilitate eating food, which takes the Child a great deal of time, and which the Child does not like doing in front of others. The Teaching Assistant has devised a successful intervention to enable the Child to spend time with a group of peers over the lunchtime with adult support through the use of Social Stories. The Teaching Assistant also uses part of the lunchtime to prepare the Child for the afternoon. It is hoped that in the long term the Child will be able to cope with lunchtimes without full-time support.
8. The Child presently has one to one support from the Teaching Assistant during the morning lessons, but does not receive such support every day in the afternoons. The Child is presently having support in the afternoons when the Child undertakes PE. The Child's class of 30 pupils is staffed by a class teacher and two teaching assistants. Next year the Child's class will have a teacher and one teaching assistant, who sometimes will not be available due to other commitments. We also bear in mind that the demands of the foundation phase curriculum will become more formalised next year.

9. We note that one of the major reasons that the Child requires support to assist them in managing anxiety. For example, the Teaching Assistant plays an important role first thing in the morning when the Child arrives at school by ensuring that the Child's anxiety about attending is managed. The Parent told us how they had to carry the Child on the journey to school, and encourage the Child by speaking to them positively about school during the journey. Throughout the papers, and the oral evidence, there are repeated references to the Child's anxiety. It is likely that there is a connection between the Child's levels of anxiety and the Child's ability to function, particularly in relation to the Child's willingness to speak. We note that the Child is now sufficiently confident to speak to the Teaching Assistant, and, on occasions, to the other teaching assistant in the class, and to one of their peers. The Child is still not able, however, to speak to their class teacher.
10. The Child has a programme of Speech and Language Therapy, which is being provided through the Child's Teaching Assistant on a daily basis. We enquired at the hearing as to the lack of an Occupational Therapy report. We note that as long ago as August 2012 the Educational Psychologist, referred to assessment by an Occupational Therapist and the possible need for a sensory diet for the Child. It was also incorporated as part of the provision contained within Part 3 of the Statement dated April 2013. We are concerned that no report has to date been obtained, not least because the Child's sensory difficulties, to which there are clear references in the papers and Part 2 of the Statement, are likely to affect the Child's anxiety levels. We are grateful to the AENCO, who confirmed that they would ensure a referral was made for such a report to be obtained. It may well be the case that the Child will require a programme of Occupational Therapy in the future, but there is insufficient evidence at present for this to be provided for specifically in the Child's Statement.
11. We are pleased to note that the support provided by the Teaching Assistant, in particular, and also the classroom teacher, have enabled the Child to make good progress. As was pointed out by the Parent, however, in terms of the Child's social interaction this still only means that the Child will talk to one adult regularly, and one other adult and one child, on occasions. In order to sustain the progress that has been made, it is our view that a high level of adult support is required by the Child, although we accept that this must be appropriately managed to prevent over dependency. To date the Child's support has been skillfully managed to ensure this does not occur. This has enabled the Child to cope with the demands of playtimes without adult support over and above that which is normally available.
12. It was agreed by the local authority that 26 hours of dedicated one to one support was required. We have concluded that this needs to be extended to 28 ½ hours of dedicated one-to-one support. That support is required to ensure the Child has support during all of their school day save for the morning and afternoon playtimes. The Child requires this support to fully access the curriculum and to ensure that the Child's anxiety is managed. This will also provide flexibility to ensure the Child's Speech and Language

intervention, and possible future Occupational Therapy intervention, can be provided. This will also allow for the present lunchtime support to be maintained.

### **Conclusion**

Accordingly, this Appeal is allowed and the Statement of Special Educational Needs in the case of the Child is amended in accordance with the draft Statement annexed hereto.

### **Order**

The Statement of Special Educational Needs maintained in respect of the Child is amended in accordance with the copy annexed hereto.

**Dated June 2013**