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Decision

Date of Birth:	2002	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2011	
People Present:	The Parents	<i>Parents</i>
	Parent Representative	<i>Solicitor</i>

Appeal

The Parents appeal under section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by the Local Authority for their Child.

Preliminary

The Local Authority did not submit a case statement as required by the Tribunal Regulations by March 2011. No action at all was taken by the LA until the end of March 2011 when an application was made to the President for an extension of time for submitting the case statement. The President refused the request on the basis that exceptional circumstances had not been shown for the delay in responding and the LA was barred from further participation in the proceedings.

The final hearing of the appeal proceeded in the absence of the LA.

Background

1. The Child is 8 years old and has a diagnosis of Autistic Spectrum Disorder (ASD) with complex learning difficulties. Since January 2007, the Child has been a pupil at School A, a maintained mainstream primary school and since September 2008, has been a member of the communication resources base at the school.
2. In November 2009, the Parents formally requested the LA to arrange a statutory assessment of the Child's special educational needs. The LA arranged the assessment and issued a final statement of special educational needs in November 2010.
3. The Parents appealed against Parts 2, 3 and 4 of the Child's statement. They did not consider that Part 2 reflected the complexity of

the Child's difficulties and that in the objectives set out in Part 3, examples of programmes were included and the provision insufficiently detailed.

4. The Child currently attends the Communication Resource Base at School A. The Child does not yet integrate purposefully into mainstream provision. In relation to Part 4, the appeal sought to include a description of the type of placement as a "specialist communication resource base" to amplify the current description of the mainstream primary school.

Evidence

5. Because of their concerns about the Child's lack of progress in attaining basic literacy skills, the Parents arranged their own professional assessments.
6. An educational psychologist assessed the Child in June 2010, undertaking individual cognitive assessment tests with the Child, observing them in school and reviewing the existing documentation available.
7. From the assessment, it was concluded that the Child has an uneven cognitive profile with good non-verbal and visual perceptual reasoning skills but poor understanding and use of language. The Child's attention and listening skills are variable and the Child struggles with comprehension of language. They identified difficulties with the Child's fine and gross motor skills and co-ordination. They described the Child as becoming very distressed when routines are changed without warning and when the environment and teaching is not structured.
8. At the conclusion of the report, they made recommendations in respect of the appropriate objectives for the Child and identified that the Child should be taught in a communication resource base that effectively supports children with ASD and associated difficulties, in an environment where there are 3 teaching staff to 7 children and all the teaching staff are trained and skilled in working with children on the autistic spectrum. They recommended precision teaching on a daily basis, regular occupational therapy and speech and language therapy input, including advice and a programme from a therapist.
9. The Child's motor and sensory integration difficulties were assessed by an Occupational Therapist in July 2010. In their report, dated November 2010, they described at length the Child's motor difficulties and concluded that the Child has a sensory processing disorder and difficulties with modulating their response to sensory input. They described the impact of the Child's identified difficulties on their access to education, including developing handwriting and recommended that the Child requires direct input from a therapist to address the significant motor and sensory difficulties. They recommended that the Child

should receive one session per week for at least 40 minutes of direct therapy, on a 1:1 withdrawal basis with a further 30 minutes of indirect therapy every week with a teaching assistant delivering a programme devised by the therapist, with weekly liaison between them. They recommended that the therapist should also deliver in-service training to all education staff working with the Child in relation to the sensory processing disorder and how the occupational therapy recommendations can be incorporated and embedded into the curriculum, with further termly meeting with the class teacher and on request informal meetings.

10. An assessment at the University Health Board Occupational Therapy department in 2010 led to a report being written dated June 2010. In it they summarised the Child's difficulties with handwriting, difficulties described by the Parents and observed on assessment. They concluded that the only difficulty highlighted was inattention and distractibility and home and school visits led to advice and strategies being provided to the parents. They confirmed that the Child has difficulty filtering visual and auditory stimulus from the environment and requires boundaries to be set to identify when their behaviour is unacceptable. They concluded that further OT intervention was not required but that the Child's difficulties would require ongoing daily management in school.
11. The Child underwent a speech and language therapy assessment in July 2010. In the report dated February 2011, they concluded that the Child had severely disordered language and social communication difficulties occurring as a result of the ASD diagnosis. Their recommendations for provision was that the Child should receive no less than 60 minutes a week of direct speech and language therapy delivered either on a one to one and individual basis or part of the time within small groups of no more than three to four other pupils. They also recommended a speech and language therapy programme delivered by a Learning Support Assistant on days when the direct therapy does not occur, delivered for 20-30 minutes per day. They further concluded that the Child should attend a social communication group delivered either by a specialist teacher or a speech and language therapist.
12. The Parents sought to have dedicated 1:1 support identified for the Child in school in order to protect him from the effects of the class getting bigger. When the Child started the Child was in a class of 7 which had during the period of their attendance there grew to 12 pupils. It was sought to protect the adult: pupil ratio and to secure a level of support for the Child. It was proposed that the Child's current 15 hours of support was ring-fenced to ensure that the Child's needs were met in class.
13. An Autism Consultant had observed the Child in school and noted that there was evidence of use of the TEACCH approach in school and that objects of reference and written scheduling was evidenced. They had identified the Child's need for support to keep them on task. They

regarded the timing of work as important to the Child in order to accommodate the Child's transient mood swings and fluctuating energy levels and attention levels.

14. The Parents gave evidence that they had been unable to ascertain from the treating speech and language therapist, precisely what provision the Child is currently receiving. The Parent was seeking to have a specific level of provision identified in Part 3 so that the provision was not dependent on the availability of therapists.
15. In relation to Part 4, the Parent Representative sought to have the resource base identified as the appropriate provision in Part 4. The Parent Representative was unable to specify what the admission arrangements were in relation to it, but did not disagree with the proposal that the Child's placement should be described as within the specialist communication resource base in Part 3.
16. At the conclusion of the hearing, the Parent Representative enquired about the possibility of the parents pursuing an application for costs against the LA in respect of the appeal.

Tribunal's Conclusions with Reasons

17. We considered the evidence presented both in the papers and orally at the hearing together with the provisions of the Code of Practice for Wales 2001. We concluded that:
18. There is little disagreement between the parties about the description of the Child's difficulties and the evidence of the privately commissioned speech and language therapy assessment supports the description of the Child's speech and language disorder as "severe". We consider that it is impossible to separate the Child's social communication difficulties from the Child's diagnosis of ASD and noted that even the privately commissioned therapist acknowledged that the Child's difficulties with social communication occur as a result of their diagnosis of ASD and did not seek to separate the two. We therefore conclude that the range of the Child's difficulties should be described but cannot be compartmentalised.
19. We were hindered in the case by the LA's failure neither to respond to the appeal nor to assist the Tribunal by presenting relevant information. We gained the impression from the failure to engage in the appeal process, by firstly not responding at all to the appeal within the given time limit and then by seeking an extension of time well after the deadline imposed that the LA was not troubled by the appeal process and could not generate enough enthusiasm to become engaged in the Child's case. There was one individual education plan in evidence and little evidence about the provision made at school, leading to a hearing where the Tribunal was required to play "devil's advocate" and to ask

very difficult questions of the parents and their witnesses which the LA should have addressed.

20. In relation to Part 3, we were not satisfied with the way in which the objectives were framed – being neither SMART (specific, measurable, achievable, relevant and timed targets) nor well phrased. The objectives themselves should not include a description of the provision required, which should be contained in the separate Part 3(b). We have, therefore, suggested amendment of the style of the objectives, and sought to improve their content.
21. We considered the parents' request for the Child to be supported by dedicated full time 1:1 support. The evidence of the professional witnesses was that the Child can access the curriculum in the context of a very small group and ASD specific environment. It is acknowledged that the Child has made progress within the current setting, recording "slow and steady progress" in the Child's language skills, and this may be in line with the Child's ability. We accept the evidence that the Child requires adult support and prompting, however, we consider that the provision should ensure a mix of both supported learning and development of independence skills within a very secure and supervised context. We can understand the Parents concerns about the increasing size of the class group in the unit, but we have concluded that the most appropriate means of ring-fencing the Child's support is not by placing the Child in a situation where they may become dependent on adult support, but by ensuring that the Child continues to receive a high adult: pupil ratio within a relatively small group situation and specialist setting.
22. The Child's current provision of support should also be reflected so that the Child's 15 hours of support per week is secure.
23. We considered the evidence from the Occupational Therapist about the provision of occupational therapy for the Child. There was a stark contrast between the conclusions of the NHS therapist and the Occupational Therapist about the level of provision required. We noted that many of the Occupational comments about fine motor skills were predicated around the Child's writing skills. We have concluded that handwriting, specifically, would not need input from a qualified therapist and could be addressed by the use of one of the many handwriting programmes available "off the shelf" and administered in school. We also noted that references to the Child's difficulties with gross motor skills referred to ball skills, which can be addressed through playing practice and PE in school. No indication was given that they had considered the possibility that the Child's co-ordination skills might not reflect the Child's level of cognitive ability nor did the discussion about the Child's sensory profile address the question of the impact of the Child's diagnosis of ASD on the anticipated profile. We have taken these aspects into consideration and conclude that because the Child has some acknowledged sensory integration difficulties which cause attention and concentration difficulties for the Child and until the extent of those difficulties are clear, the Child does require some level of

therapy input in the short term. We consider that the Occupational Therapist's recommendations were exceptionally generous and did not reflect the appropriate level of provision for the Child given the fact that the Child has not presented with significant gross motor skills and that their handwriting can be addressed without qualified therapist input. We consider that the most important aspect of the provision in the long term is likely to be that the therapy recommendations are embedded into the curriculum and delivered throughout the school day. We have therefore structured the provision in Part 3 to reflect these conclusions.

24. We considered the evidence of the speech and language therapists and concluded that there was little between them on the appropriate level of provision. We accepted the Parents' submission that the provision should be specified in Part 3 and should be sufficiently quantified to ensure that the Child continues to receive the appropriate level of provision to meet the Child's needs regardless of the number of pupils in the unit and the availability of a therapist.
25. In light of our conclusion in paragraph 21 we have concluded that the description of the provision in a specialist unit should appear in Part 3 and consequently we do not propose to amend Part 4.

Order

Appeal allowed.

It is ordered that the Local Authority do amend the statement of the Child as follows:

- i) In Part 2 by replacing the existing description of the Child's needs with the description contained in the amended statement attached to the decision.
- ii) In Part 3, by amending the objectives as set out in the amended statement attached to the decision.
- iii) In Part 3, under the heading "3b Provision" by amending the description of provision as set out in the attached amended statement.
- iv) In Part 4, by amending the description of provision as set out in the attached amended statement.

Dated May 2011