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Decision

Date of Birth:	2005	
Appeal of:	The Parents	
Type of Appeal:	Contents of a statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2010	
People present:	The Parent	<i>Parent</i>
	Parent Representative	<i>Solicitor</i>
	Parent Witness	<i>Occupational Therapist</i>
	Parent Witness	<i>SALT</i>
	LA Representative	<i>Representative</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>Consultant Paediatrician</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 the Child.

Preliminary Issues

An application for the admission of late evidence was made by both parties. The LA had at least five days prior to the hearing filed and served two reports, namely:

- i. An Educational Psychology report dated July 2010, and
- ii. A Speech and Language therapy by a Speech and Language therapist engaged by the Health Board

These documents had also been submitted by the Parents as part of their own application for the admission of late evidence. Accordingly there was no opposition to the admission of these documents in evidence. Given that they complied with the relevant criteria under regulation 33(2) the documents were admitted in evidence.

The LA further applied under regulation 33(3) for the admission of the following documents as late evidence:

- i. An Occupational Therapy report dated August 2010 compiled by a Paediatric Occupational therapist,
- ii. A school report in July 2010 from School A

- iii. A report dated September 2010 prepared by a Consultant Paediatrician, and
- iv. A report by an Advisory Teacher for Autism dated July 2010

The tribunal admitted the occupational therapy report on the basis that there was no recent occupational therapy evidence contained in the bundle and that the Parents had seen this report and did not object to its admission in evidence. In addition an occupational therapist was present as a witness for the parents to deal with any issues that arose. Likewise in relation to the school report (which was not signed or dated) the tribunal considered that it would be prejudicial to the interests of the child if recent evidence from the school were not available. No other information from the school was contained within the bundle.

The Parents had already seen this report at the end of the last school term and were familiar with its contents and the tribunal accepted the reasons given by the LA for the late filing of the report, namely that the teacher who had compiled this report was no longer working at the school and had taken a copy of the report with him. As a result it had taken some time for the LA to retrieve a copy.

The Parents did not object to the admission of the further report. The tribunal accepted that the report ought to be admitted as it was recently compiled and gave current information in relation to the medical diagnosis. The tribunal also gave permission for an amended report dated May 2010 to be included in the bundle to replace the original report dated March 2010. Changes had been made to the report at the request of the Parents.

The tribunal however did not admit the report of the Advisory Teacher which had been compiled following a visit to the school in July 2010. This report should have been filed well before this hearing. In addition the Parents had not seen a copy of the report until the morning of the hearing.

The Parents applied for the admission of two reports in evidence in addition to those referred to above. Both reports complied with the necessary criteria for admission under regulation 33(2) and the LA did not oppose the application in any event. This application was accordingly allowed.

Facts

1. The Child was born in January 2005 and is now five years and eight months of age. The appellants are the Child's Parents.
2. Prior to the Child attending school the paediatrician highlighted some concerns which may have been indicative of an autistic spectrum disorder. A referral was made to Entry into Education to address possible issues. The Parents began attending pre-school in September 2008.
3. Entry into Education considered the Child's case in December 2008, when it was recommended that the Pupil Progress Officer should liaise

with the primary school in order to facilitate the Child's entry in January 2009.

4. The Child did not start school in January 2009 but began to attend on a part time basis after Easter 2009, leading to the Child attending full time from November 2009.
5. In light of on-going issues concerning the Child's medical and learning needs, a request for a statutory assessment was made by the Parents in May 2009. Upon completion of the statutory assessment the LA issued a note in lieu in September 2009.
6. As a result the Parents appealed to this tribunal against the LA's decision not to issue a statement. This appeal was deemed to have been upheld when the LA agreed to issue a statement. A statement of special educational needs was then issued in February 2010.
7. The Child is currently a year 1 pupil at School A. This is a mainstream primary school with about one hundred pupils. The Child is placed in a mixed class of twenty six year 1 and year 2 pupils. The language of the classroom is English.
8. The Child has been diagnosed with epilepsy and developmental co-ordination disorder.
9. The Parents now appeal against parts 2 and 3 of the statement of special educational needs dated February 2010.

Tribunal's Decision with Reasons

We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submissions given at the hearing.

We have also considered the relevant provisions of the Code of Practice for Wales 2002.

We conclude as follows:

1. The Parents produced a working document prior to the hearing which had been considered by the LA. Following further discussions between the parties, a revised working document was presented that reflected agreement upon the majority of the contents of part 2 of the proposed statement. The tribunal is content to adopt the agreed passages as being an accurate reflection of the Child's special educational needs. In relation to the outstanding areas in dispute the tribunal has adopted wording that it considers best reflects the evidence in light of the findings made below. It is not necessary to highlight each and every amendment in this decision.

2. The tribunal heard evidence from a community paediatrician. The Paediatrician saw the Child in March 2010 and had reviewed the various reports produced by other specialists involved with the Child. The report dated September 2010 was accepted as late evidence by the tribunal. The Paediatrician confirmed the diagnosis of epilepsy but indicated that they were satisfied that the epilepsy could be controlled in order to give the Child a good quality of life. The Child is presently prescribed two anti-convulsant medications. The Paediatrician did not believe that there were any identified side effects from these medications that affected the Child's learning at school. The Child did not attribute an apparent drowsiness in the morning to the effect of the epilepsy medication.
3. The Paediatrician acknowledged that the use of the term 'global developmental delay' in the latest report was misleading and that the intention was to describe the Child as having been delayed in reaching milestones. The Paediatrician acknowledged that the use of the term was not accurate in an educational context. The Paediatrician confirmed that the Child has a diagnosis of developmental co-ordination delay and that, whilst not certain whether or not it could be classified as mild, moderate or severe, the Paediatrician was inclined upon the evidence and information that they had considered to place the Child in the moderate bracket. The Paediatrician considered that the Child requires occupational therapy input. They further indicated that they consider that many of the absences that have been reported as epileptic absences were not epileptic in nature.
4. It would have been of benefit to the tribunal to have received more evidence from the school, in particular to have received copies of the IEPs produced for the Child. The school report admitted as late evidence provided some information, although this report appears incomplete as it makes no reference at all to the provision of additional support for the Child during the school day or the fact that the Child has the benefit of a statement of special educational needs.
5. The Child had started the new term as a year 1 pupil a few days before the tribunal hearing. The LA had already resolved to provide dedicated teaching assistant support for twenty seven and a half hours per week to the Child. A document was provided to the tribunal to illustrate how the hours were to be allocated and how the support was to be deployed during the school day.
6. The Parents, relying upon a report, argued for full time one-to-one support amounting to 35.5 hours per week. The tribunal however can see no justification for full time one-to-one support, and indeed considers that 27.5 hours of support may be regarded as over provision.
7. The reasons given by both sides for the provision of additional support was that the Child experienced considerable difficulties with focus and concentration. To quote from the report:

"It would seem from the evidence available that the Child's access to learning is significant affected by the Child's difficulties with

focus and concentration. It may be that the Child's difficulties with verbal communication are a contributory factor in their ability and motivation to engage and attend; particularly when the focus is upon the verbal content of an activity or session. The Child will require additional support and particular management of the Child's focus and concentration skills in order that the Child's access to learning is not inhibited."

8. Whilst the Parents were adamant that the Child could not manage without full time support, it appeared that the Child was making pleasing progress and was settling into the school routine. No behaviour issues were identified.
9. The Child is placed in a class of twenty six children, comprising a mix of year 1 and year 2 pupils. It is a large classroom area with an annexe. Two other children in the class have dedicated teaching assistant support. In addition there is a foundation phase teaching assistant and a class teacher. The dedicated support for the Child will be provided by two teaching assistants sharing the role. When not supporting the Child they are engaged in other duties at the school. The LA was confident that this arrangement ensured continuity and consistency of support in the event of one of the teaching assistants being absent.
10. The LA was not able to provide the tribunal with any indication as to what responsibilities would be allocated to the teaching assistants and how the class teacher would develop a suitable curriculum. In the absence of any IEPs it is difficult to identify what programmes are to be delivered which require such high level of support. Indeed from the evidence it appears that the Child is no different from the other children in the class and that there are no exceptional needs identified.
11. It became apparent during the course of the evidence that the Parents have not been involved in the setting of IEP targets and the tribunal regards it as essential that the Parents are involved with the class teacher and the SENCO in setting and reviewing targets. Attention needs to be given to establishing and maintaining effective home/school liaison.
12. In the latest reports it suggests, on the basis of test results, that the gulf between the Child and the Child's peers is widening. However after reflecting on the confidence intervals for these results they acknowledged that the scores were much closer together than originally thought and in some cases overlapped. Consideration of the confidence intervals therefore placed the apparent gap in perspective. Given the Child's age it is only to be expected that there will be some inconsistency in test results.
13. The tribunal accepts that the evidence points to the Child's experiencing difficulties with focus and concentration, but given the level of classroom staffing and the hours of teaching assistant support provided, namely 27.5 hours, it appears that the Child is currently adequately supported throughout the day. The Child appears to be making progress. The

tribunal does consider that there is a risk that this support amounts to over provision which can lead to over dependency. It is important that this level of support is reviewed in the light of the Child's progress and growing independence.

14. In terms of the provision of Occupational Therapy the parties were in agreement that such therapy was an educational need. The tribunal is content on the basis of the evidence to make a finding to this effect. The tribunal considered two reports from a Health Board occupational therapist the second of which resulted from an assessment in August 2010. The tribunal also heard evidence from an occupational therapist who had first reported in November 2009 when the Child was starting on a full time basis in the reception class. The Therapist had seen the Child at home the day before the hearing and was therefore able to update their assessment. The Therapist having considered the occupational therapy currently provided through a 'Smart Moves' programme, was able to modify their own recommendations. As identified above the Child has been diagnosed with developmental co-ordination disorder. The Therapist reported however that the Child has made progress in line with their age. The Therapist considered that the proposal for daily fifteen minute sessions, incorporated into the daily curriculum, of occupational therapy was the most effective model to implement. The evidence of both therapists identifies difficulties with the Child's core stability and with pencil skills. The Therapist showed examples of the Child's handwriting which they believed highlighted that the Child had not made progress in this area. However the Child is a skilled artist as was illustrated by the picture of a horse drawn by the Child during their meeting. The Therapist was not able to offer an explanation for this apparent anomaly.
15. In any event the difference between the parties in terms of the provision required had narrowed to the extent that the only difference was the proposal by the Therapist that an Occupational Therapist should attend school for two hours every six weeks to observe monitor and to update the programme. The tribunal does not believe that the role envisaged for the occupational therapist requires two hours of the professional's time and considers that attendance at school for one hour every half term will be sufficient to undertake the necessary observation, monitoring, updating and reviewing and will also enable advice and guidance to be given to the teaching assistant delivering the Smart Move programme. Occupational therapy should be provided in relatively short focused sessions and thereafter implemented throughout the day as part of the curriculum.
16. The parties are in agreement that Speech and Language therapy is an educational need. The tribunal also finds this to be the case. The Speech and Language Therapist giving evidence for the Parents indicated that they were more than happy with the social communication and social interaction programme proposed by the LA. The Child will attend a social communication group twice per week for no less than twenty minutes each session. The Speech and Language Therapist stated that as the Child's early literary skills were quite appropriate then there were no phonological awareness issues.

17. The LA proposes that a written programme to develop speech and language should be provided by a speech and language therapist for delivery three times a week, in withdrawal sessions for fifteen minutes by the teaching assistant. The Child will attend the social communication group on the other two days. This provision in the view of the LA provides consistent and concentrated support throughout the whole week.
18. The LA relies upon the report of the speech and language therapy provision that they propose for the Child. In addition there is an assessment dated July 2009 which concluded that :

“The Child presents as a child who has particular strength in language, particularly demonstrated by the assessments detailed in the report. The Child does present with problems with pragmatics and syntax which should be monitored.”
19. Although the Speech & Language therapists report is dated August 2010, it is based upon an assessment of the Child undertaken in May 2010. It concludes that

“The Child presents with receptive language skills within the normal range. In the Child’s expressive language skills the Child presents with word finding difficulties and considerable difficulties with explaining. The Child also presents with grammatical immaturity.
20. In July 2010 the Child was assessed and performed various tests including the CELF. They assessed the Child’s expressive language as being age appropriate. They concluded that :

“The Child is a happy sociable young child who enjoys the company of others. A comprehensive assessment of the Child’s receptive and expressive communication skills suggests that the Child is able to follow classroom instructions alongside peers. The Child is able to articulate their thoughts and ideas effectively and justify their response on request. The Child is able to participate in group activities as well as working individually within the school environment.”
21. The Speech and Language therapist took issue with the conclusion of a report, in particular with regard to the Child’s expressive language. The Speech and Language Therapist in particular questions the validity of the test results, given that they were undertaken only two months after they had performed similar tests. The tribunal accepts that the test results may therefore be tainted.
22. However it is also the case that other professionals have commented on the Child’s communication skills. The Child’s difficulties are reported upon and it states that the Child has significant speech, language and communication difficulties.

23. The LA accepts that Speech and Language therapy is necessary to meet the Child's needs and there is provision contained in their proposed statement. The difference between the parties is that they propose direct contact from a Speech and Language therapist on a weekly basis for a term and thereafter on a fortnightly basis. In support of their argument for direct speech and language therapy provision they state that the Child's difficulties have not yet been clearly identified, and that we cannot ignore the family history. We should also consider the medical complexities and also they argue that it would be cost effective for the LA to provide intensive therapy at this stage in order to identify and address the Child's communication difficulties.
24. The tribunal accepts that there are sufficient issues raised with regard to the Child's communication skills so as to warrant direct therapy and it accepts the arguments made in this regard. However the tribunal considers that one of the aims of the direct therapy will be to inform the annual review of her communication needs. Given that it is likely to be close to half term before direct speech and language therapy session begin the tribunal considers it more appropriate for the therapy to be provided as a block of twelve weeks for one session per week.
25. Given the Child's reported difficulties with focus and concentration, the tribunal concludes that forty minute sessions will be too long and ultimately unproductive. In those circumstances the tribunal concludes that the direct sessions should be for a maximum of twenty minutes. The speech and language therapist will report to the annual review to enable an informed decision to be made about future provision.
26. There are numerous references to the Child's medical needs both in part 2 and part 3 of the statement which ought to be contained in a medical care plan as they are not educational needs.
27. The Appeal is therefore allowed to the extent set out above and as reflected in the amendments made to Parts 2 and 3 were added to the original decision.

Order:

Appeal allowed.

Dated September 2010