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Decision

Date of Birth:	1997	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2010	
Persons Present:	The Parents	<i>Parents</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 Issues

The LA in its case statement indicated that it was not opposing the appeal. Regulation 15(1) provides as follows:

“If the secretary of the tribunal does not receive a statement of case from the authority within the case statement period or if the authority states in writing that it does not resist the appeal, or withdraws its opposition to the appeal, the tribunal shall either (a) determine the appeal on the basis of the notice of appeal without a hearing or (b) without notifying the authority hold a hearing at which the authority is not represented.”

Regulation 15(2) provides:

“Where the parent’s appeal relates to the contents of the child’s statement, no statement that the authority does not resist the appeal or that it withdraws its opposition shall take effect until the authority sends the tribunal a written statement of the amendments (if any) to the statement which it agrees to make.”

In this case the LA has provided details of the changes that it agrees to make to parts 2 and 3 of the statement but the parents indicated that they do not agree those proposed changes. In those circumstances it was necessary to hold a hearing at which the local authority was not represented.

Facts

1. The Child was born in October 1997 and is now thirteen years of age. The appellants are the child's Parents.
2. The Child first received a statement of special educational needs in July 2003.
3. The Child transferred to School A in September 2009.
4. In October 2009 the Child was assessed at Great Ormond Street Hospital. This multi disciplinary assessment concluded that the Child "has significant and severe difficulties that are compatible with a child with a diagnosis of autistic spectrum disorder". The team at Great Ormond Street Hospital concluded that the Child "... meets criteria for Asperger's Syndrome" and that in addition "has severe symptoms that are typical of a child with an anxiety disorder".
5. As a result the Child was placed at School B in March 2010. This is an independent special school.
6. In May 2010 the LA issued a final amended statement of special educational needs, which summarises the Child as having special educational needs associated with difficulties in the following areas:-
 - Very high conceptual ability
 - Asperger's syndrome
 - social use of language/communication
 - social interaction/relationships
 - social imagination
 - Emotional and behavioural difficulties
 - Anxiety
 - Adaptive functioning
 - Sensory integration skills
 - Gross motor skills and balance
 - Laxity in joints particularly in his thumbs
 - Independence skills
7. Part 3 of the statement contains the following provision under the heading "Language Communication and Interaction":

"The opportunity to explore intensive schooling in the Welsh language on occasions when the Child return to the Local Authority area".
8. In July 2010 the parents launched an appeal against parts 2 and 3 of the statement in effect to seek specification and quantification of the provision of Welsh language and literacy tuition for the Child.
9. The tribunal has power to dismiss the appeal or to direct the LA to amend the statement in such manner as specified by the tribunal.

Tribunal's Decision with Reasons

We have carefully considered all the written evidence and submissions present 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 LA proposes the following changes to the statement, namely :

Part 2: (under Language Communication and Interaction) – to be added at the end of the paragraph:

The Child is a bilingual child, with Welsh being the second language.

Part 3: Provision - added at end of Long Term Objectives:

To maintain the Child's second language Welsh language and literacy skills.

Provision under Language Communication and Interaction, to be added at the end:

Weekly timetabled second language Welsh language and literacy sessions, facilitated through an appropriate web based and literacy resources.

2. The Parents indicated prior to the hearing that they are not in agreement with the LA's proposed wording, and as there was insufficient other information in the bundle it was necessary to hold a hearing.
3. In respect of part 2 of the statement the Parents propose the following additional wording, namely :
The Child will be able to use Welsh fluently and with confidence to become a full member of the bilingual society in which the Child lives.
4. This proposed wording in effect summarises the parents' long term objective in so far as the Child's use of the Welsh language is concerned. They seek to ensure that the Child is given the opportunity to maintain and develop their use and knowledge of the Welsh language whilst in their current placement.
5. The tribunal was informed that the Child's knowledge of Welsh is probably at a higher level than that of their sibling who is in mainstream

school, is considered a first language speaker and likely to be entered for a Welsh first language GCSE. They believe that the Child requires tuition in order to achieve their potential and that the level of such tuition should be commensurate with the Child's ability in Welsh.

6. When the Child was initially placed at School B other issues took precedence, but it has become apparent that the Child is expressing concern that they may be losing their Welsh through lack of practice. The tribunal was told that the Child wishes to have an opportunity to converse in Welsh. The Child is not however aware of this appeal. There is a record of a discussion regarding Welsh language tuition contained in the record of the annual review held in June 2010 at School B.
7. This tribunal is not required to address the issue of whether or not the teaching of the Welsh language is a special educational need as the LA accepts that the provision of Welsh tuition should appear in the statement. The Parents told the tribunal that they consider that in the Child's case the provision of Welsh was a special educational need as the Child was educated outside Wales, not through choice but because of their special educational needs. The tribunal however makes no finding on this issue.
8. The Parents admit that they had not initially considered that Welsh language teaching was possible. However given that they now realised that this could be achieved, they required the provision to be appropriately specified and quantified.
9. The statement under appeal makes one reference to the provision of Welsh language tuition but upon closer examination the relevant sentence is meaningless as it does not describe any form of provision. The tribunal understands that nothing has been done by the LA in any event to pursue the issue. In addition there is no reference to the Welsh language in the part 2 description. The Parents explained that they had explored the possibility of arranging tuition for the Child during school holidays but that only adult learning provision was readily available in the area.
10. The tribunal was informed that the Child is doing well at school and making good progress. Routine is very important to the Child. The Child has a room of their own and has use of their own laptop and webcam facilities.
11. The Child isn't particularly communicative and will not speak to the parents by telephone. The Child does communicate with them by e-mail when absolutely necessary. However, when the Child has been home during school holidays and at weekends, neighbours have commented on the positive change in the Child.
12. The parents are anxious that the Child has the opportunity to fulfil their potential in Welsh and to obtain qualifications similar to those their

siblings may attain at School C. They accept on reflection that such a goal may be unrealistic but nevertheless it is important that the Child has the opportunity to fulfil their potential. There is no current information from the school contained in the bundle but the tribunal was informed that the school is happy to arrange the delivery of Welsh language tuition provided that it is not to the detriment of the Child's other education. The tribunal was told that there are certain lessons such as drama and PE which the Child finds difficult and in which the Child does not engage. The Parents consider that these lessons could provide an opportunity for Welsh tuition. In any event the Child has free time and if necessary can be taught after the end of normal school hours.

13. In terms of specifying and quantifying the provision the Parents feel that they need to be guided by others as they had insufficient knowledge to do so. They calculate that the Child's sister receives some two and a half hours of Welsh tuition per week in mainstream school and as such as the Child would receive tuition on a one to one basis they estimate that an hour and a half per week would be appropriate.
14. The Parents are keen to explore whether any Welsh speakers living in the area could be recruited on a voluntary basis to converse in Welsh with the Child. The parents acknowledge that this tribunal cannot write such a provision into the statement but such an arrangement is worth pursuing to provide the Child with regular Welsh conversation as a means to promote language and literacy skills. This is an issue that should be considered by the school and the LA in conjunction with the parents.
15. Part 2 of a statement describes all the child's learning difficulties identified during the statutory assessment. It should also include a description of the child's current functioning. The tribunal does not consider that the form of wording suggested by the parents sits comfortably in part 2 of the statement. Those words identify a long term objective and an ultimate goal and do not describe his current functioning. The Parents argue that the Child should not be labelled as second language Welsh speaker. They consider that the Child has a good knowledge of the Welsh language and if they were a pupil in a mainstream school would be regarded as a first language Welsh speaker. However the tribunal considers that the important aspect is not so much the description of the Child's abilities but that the tuition provided is appropriate for the Child's abilities and potential. An assessment of the Child's ability is required.
16. The tribunal considers that the following wording should be included in part 2 as an appropriate description of his abilities and current functioning:

"The Child is a bilingual child who has expressed a desire to maintain and develop their use of the Welsh language."

A similar objection was raised by the parents in relation to the long term objective proposed by the LA in part 3 as the proposed objective refers only to maintaining his Welsh language and literacy skills and makes no allowance for progressing and developing those skills. The tribunal considers this to be a reasonable objection by the parents as it is clearly necessary not only to maintain his current knowledge but to develop his use and knowledge of the language in order to enable the Child to reach their full potential. The objective in part 3 will therefore be worded as follows:

“To maintain and develop the Child’s Welsh language and literacy skills.”

17. In so far as the description of the provision in part 3 is concerned there is general agreement that the tuition will be facilitated through appropriate web based and literacy resources. The provision should not be limited to those resources mentioned as all forms of resources should be considered. To quote the Child’s father there should be “some thinking outside the box” as to how the tuition is delivered. The important factor however is that the Child’s current ability is established by assessment and that a programme is then delivered at a level that is commensurate with the Child’s abilities and that the Child’s progress thereafter is regularly monitored.

18. As yet however the Child’s current ability not been established. The programme to be followed has not been planned and there is no certainty that the Child will engage with this additional work in any event. On that basis and as the provision will be subject to termly monitoring and an annual review, the tribunal considers at this stage that weekly sessions for a minimum of one hour are appropriate. The provision in part 3 of the statement will therefore read as follows :

“Weekly timetabled Welsh language and literacy sessions for a minimum of one hour commensurate with his oral and written ability and facilitated through appropriate web-based, literacy and other resources.”

19. It is necessary for there to be regular monitoring of the Child’s progress and it is essential that the Welsh tutor - or possibly more appropriately described as a facilitator – also contributes to the setting of the Child’s IEP. Page 7 of the final statement is missing from the copy contained in the tribunal’s bundle. The monitoring provisions appear on this page. The tribunal is told by the parents however that the monitoring arrangements are similar to those appearing in the amended draft statement contained in the bundle. The tribunal considers that these monitoring provisions are appropriate save that there should be a reference to the Welsh tutor/facilitator as a reminder that this person’s involvement is not overlooked.

20. Once the statement has been amended there will to be a period of assessment to enable appropriate arrangements to be made and for the tuition to be embedded in the curriculum. All parties involved will

be required to co-operate fully in this process to ensure that the arrangements are made promptly and in a manner that affords the Child's the best opportunity to benefit from their Welsh tuition. It is acknowledged by the Child's parents that the Child may choose not to engage with this process, but it is important that the Child has the opportunity to do so.

21. This appeal is therefore allowed to the extent set out in this decision.

Order: Appeal allowed

Parts 2 & 3 amendments were attached to this decision.

Dated November 2010