Decision

Date of Birth:	1996	
Appeal of:	The Parent	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2011	
Persons Present:	The Parent	*Parent*
	Parents Representative	*Legal*
	Parents Witness	*Educational Psychologist*
	Parents Witness	*SALT*
	LA Representative	*Legal*
	LA Witness	*Educational Psychologist*
	LA Witness	*SENCO – School A*
	Observer	*Tribunal Member*

Appeal

The Parent appeals 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 tribunal admitted the following documentation as late evidence under regulation 33(2) upon the application of the LA, namely:

i. Updated educational psychology report dated February 2011

ii. Speech and language therapy report dated March 2011

iii. Physiotherapy report dated December 2010

iv. Letter dated December 2010 from a Consultant Paediatrician

The tribunal refused the application of the LA for the admission of the following documentation as late evidence on the grounds that the criteria for admission under regulation 33(3) were not satisfied:

i. The results of a standardised test undertaken in March 2011

ii. A home tuition booklet

iii. Up dated attendance record

iv. Timetable for year 10 pupils

v. Newspaper cuttings of the Child provided by the school

The appellant's application to admit an undated letter purportedly written by the Child was allowed. The LA did not oppose the application and the criteria for admission under regulation 33(2) were satisfied.

Facts

i. The Child was born in November 1996 and is now fourteen years and four months of age. The appellant is the Parent.

ii. Having attended the nursery at School B the Child was educated at home between the ages of five and nine. The Child was then enrolled at School C for about twelve months before moving to School D. The Child attended the school for about a year before again being withdrawn and educated at home.

iii. The Child's GP wrote to the education welfare officer in June 2008, indicating that the Child was unable to attend school because of "considerable stress" and other medical difficulties. The Parent then requested a statutory assessment which was not undertaken as the LA did not feel that there was sufficient evidence to proceed.

iv. The Child attended School A in September 2008. A joint consultation between the school and the educational psychology service was held in October 2008 to formulate an educational plan for the Child

v. In June 2009 a statutory assessment was commenced and the Child was assessed by an Educational Psychologist in December 2009.

vi. A statement of special educational needs was issued in September 2010.

vii. The Child is currently a year 9 pupil at School A. The Child has been diagnosed with Benign Hypermobility Syndrome and chronic pain syndrome.

The Parent now appeals against parts 2 and 3 of the statement of special educational needs dated September 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. Each party provided a working document which made it difficult for the tribunal to identify the areas of agreement and to establish the areas of disagreement in parts 2 and 3. In most cases it appears that both parties seek to include conclusions from reports provided by their own witness which do not always assist in providing a complete picture of the Child's special educational needs.

2. The essential difference between the parties is that the LA seeks to maintain the Child's attendance at school with appropriate support to enable them to access the curriculum. The Parent however seeks an arrangement whereby the Child receives additional tuition both at school and at home to enable the Child to catch up with work that they have missed due to numerous and regular absences from school.

3. The bundle contains several medical reports from persons who have assessed the Child in the recent past.

4. It is recorded that the Child was diagnosed with Benign Hypermobility Syndrome after seeing a Professor Clinical Geneticist, in 2006. There is no written record of the diagnosis but it is mentioned in the report referred to below. There is a copy of a letter dated June 2006 sent by the Professor to the Child's General Practitioner. That letter deals mainly with the Child's sibling who has similar difficulties. The Professor concludes in relation to the Child that the Child "should be managed as conservatively as possible and really needs the attention of a sympathetic paediatric rheumatologist with interest in the management of painful complications of benign hypermobility."

5. The bundle also contains a series of letters written in February 2009 by a Consultant Rheumatologist at the University Hospital after they had seen the Child at the clinic the previous day. These letters are addressed in turn to the Consultant Paediatrician, the GP, the Consultant Child Psychologist, and the Senior Paediatric Physiotherapist and to the Parent. There is also a letter dated March 2009 stating that "The Child seems to be functioning fairly well at present and is attending school regularly…… "I have not arranged any regular review appointments but would also be happy to see the Child again should any further assessment or advice be needed".

6. In the letter to the Consultant Paediatrician, the Consultant Rheumatologist seeks care and support for the Child in view of "the psycho-social and educational difficulties that this child may experience".

7. The letter sent by Consultant Paediatrician to the GP is more detailed and reviews the Child's condition and the treatment provided. They also conclude "I agree that the Child technically fulfils the definition of hypermobility with a Beighton score of 6/9 but there is undoubtedly also an (sic) element of chronic pain relating to the Child's current psycho-social state. I have discussed this with the Parent, who tells me that there is no scope for any child psychology input in the area as they have tried to obtain such input for their other child". It further states that "the Child would benefit from more intensive physiotherapy with hydrotherapy and will also need co-ordinated multi disciplinary treatment for the pain syndrome including psychology input".

8. The purpose of Consultant Paediatrician letter to Consultant Child Psychologist is to seek the psychological input that they consider necessary. It is unclear whether or not such support has been provided or offered.

9. The Consultant Paediatrician again writes in November 2010 in response to a request by the LA. They write "I saw the Child in February 2009 and again in March 2009. As you say the Child has been diagnosed with benign hypermobility syndrome after seeing Professor Clinical Geneticist in 2006. I also diagnosed a chronic pain syndrome in the Child as I did not feel that the physical findings of hypermobility which were not severe could explain the level of pain and disability the Child was exhibiting. It seems that the Child had a pain amplification syndrome related to recent psychological traumas, including the departure of their other Parent from the family home a year before the Child was seen by me and a previous history of a mauling by a dog, which left the Child with a scarred face. At the time they had seen the Child was functioning relatively well and was attending school regularly. With the correct support and treatment the Child should have improved."

10. It should be noted however that Consultant Paediatrician concedes that they have not seen the Child for some time and as such is not able to give an accurate assessment of the Child's current needs. They conclude their letter by indicating "It may be more appropriate for the Child to be assessed by Consultant Paediatrician and a community paediatrician as well a paediatric physiotherapist and occupational therapist for the Child to have the full assessment needed to provide specific recommendations and guidance needed to enable the Child to access the school curriculum fully".

11. The Child also attended a paediatric rheumatology clinic run by Consultant Paediatrician in August 2010. The Consultant Paediatrician in their letter December 2010 writes "When we last saw the Child in clinic at the end of November the Child mentioned that they had been missing some school towards the end of the week. Our plan to try and improve the chronic pain and hyper mobility related pain was via physiotherapy and the use of simple analgesics to enable the Child to do physiotherapy. The Child has also had some input from the podiatrists to provide them with more supportive footwear, which should also relieve the symptoms that the Child has in their legs due to hyper mobility".

"My expectation would be that the Child is able to attend school as long as the Child has adequate support. This may require some adaptations to the work environment in the school which could be provide through the occupational therapy service. The Child will have days when the pain is worse than others and may need help with pain relief as well as mobility. However this should be minimised if the Child follows the physiotherapy exercise with the aim of improving muscle strength and perception of pain".

12. The Child is currently a patient of Consultant Paediatrician at a General Hospital in the area. A Consultant Paediatrician letter dated December 2010 was admitted as late evidence in this appeal. Consultant Paediatrician writes "We would encourage the Child to attend school and from my point of view there is no contra indication. The chronic pain is difficult to assess and can be very subjective. This may theoretically result in irregular attendance and needs to be taken into consideration. Repetitive activities tend to aggravate the pain and this may be alleviated by modified physical activities at school with advice from occupational therapy and physiotherapy" and concludes their letter "I continue to monitor the Child's progress in my clinic and if you require further information please do not hesitate to contact me".

13. There is also a report dated March 2010 from a Consultant Paediatrician, who saw the Child for assessment in March 2010. The Child had been referred to the Consultant in light of the Parents concern that the Child may have Asperger's Syndrome. The Consultant concludes "that the Child does have autistic traits but I do not think that there are enough features for the Child to pass threshold criteria for a diagnosis of Asperger's Syndrome. The Child however does have some quirky ASD type behaviours which need to be taken into account in the individual education plan in school".

14. A physiotherapy report dated December 2010 was also produced as late evidence. In this report the physiotherapist states "the Child's biggest problem linked to their condition is chronic pain, which mainly affects the upper and lower back although other joints have been affected at times. Pain is difficult to define and can vary on a daily basis depending upon someone's emotions, hormones, and activity levels. The Child in particular finds it difficult to cope with the pain, and as a result activities of daily living are affected including school attendance. Although sympathy and understanding towards the Child's pain is required, I would recommend that the Child leads as normal a routine as possible as a pain management strategy to ensure that the Child stays in control of the pain rather than it taking control of them".

15. The tribunal heard evidence during the hearing from an Educational Psychologist. The Educational Psychologist has written two reports, one dated December 2009 and a further updated report in February 2011. The Educational Psychologist concludes that there is no significant difference between the scores that the Child obtained in the standardised tests performed in 2009 and those in 2011. It concludes that the Child's performance falls within the average range. Another Educational Psychologist also concludes that the Child has average ability. They do however argue that some of the test results suggest that the Child has

difficulties with inferential understanding and that as a result becomes easily confused. They argued that unless one identifies the Child's strengths and weaknesses then there can be no understanding of those weaknesses. They point to the low score obtained by the Child in the test for quantitative reasoning performed for the Educational Psychologist which yielded a percentile score of 27. They consider this to demonstrate a weakness in the Child's problem solving and believe that the evidence shows that the Child's performance drops when the Child doesn't understand what is expected of them.

16. The Educational Psychologist drew the attention of the tribunal to their view that the Child did not perform to the best of their ability on quantitative reasoning and explains the reasons in their report. The Educational Psychologist believes that the result of this particular test is compromised as the Child did not make as much effort as it was immediately before lunch when they had arranged for the Parent to collect them at the end of the morning session because of their back pain. The Educational Psychologist re-iterated in their evidence to the tribunal that they considered that this factor could explain the discrepancy in the score obtained for quantative reasoning and account for the Child's under performance.

17. There was some dispute between the educational psychologists as to the range of tests administered and the nature of the questions posed. However the tribunal does not consider that it needs resolve this particular dispute. The tribunal however rejects the suggestion made were misleading the tribunal with the evidence. The tribunal found the Educational Psychologist to be a credible witness and accepts the evidence.

18. The Educational Psychologist in their assessment considers that there is a disparity between the Child's verbal and non verbal ability in favour of the latter. This conclusion leads to the recommendation "that there needs to be a teacher appointed to the school for five hours per week and to provide home tuition when the Child cannot get into school who will have the responsibility of coordination for all missed work from the subject areas obtaining the teaching notes for each lesson and going over missed lessons with the Child."

19. The Parents therefore adopts these recommendations and further proposes that the same teacher provides home tuition for up to a third of the school week at home. The Parents believes that such an arrangement will enable the Child to be more relaxed and remove the "aggro" of going into to school when the pain proves too great.

20. The Parents reports that the Child is an early riser because it takes time for the Child to get ready in the mornings. It is also the case that the Child tends to the numerous dogs at this time. The Parents told the tribunal that the Child has a taxi to school but if it is considered that the Child is not well enough to attend then the taxi driver will be telephoned at around 7:30 to cancel the ride.

21. The Child's attendance at school has been poor and their average attendance since August 2010 recorded at 53.2%. It is however

encouraging to note that the Child managed to attend school for five days during the week preceding the appeal hearing. It does not appear that there is any discernable pattern to the days that are missed although the Parent thought that generally Wednesdays and Thursdays tended to be the worst days for the Child.

22. The LA argues that the Child should be encouraged to attend school regularly. The Child would receive home tuition only if they met the relevant criteria. It is understood that this means a period of prolonged continuous absence. The intermittent nature of the medical condition however does not fall within that category, although the Child's absences are sufficient so as not to allow them to follow any structured pattern.

23. The LA contends that the provision of full time dedicated teaching assistant support will perform the dual function of assisting the Child during the school day when the Child is in attendance and will also help the Child in catching up on missed work and to provide the Child with the relevant notes.

24. The LA also points to the fact that as the Child is now moving into Key Stage 4 there will be one less subject for them to study which will provide additional free time at school for the Child to catch up.

25. The Parent argues that the Teaching Assistant is not always present to assist the Child and refers to an incident during a design and technology lesson when the Child caught their fingers in a vice. It is unclear what happened during this incident but the LA was making enquiries. The Child was not reported to have sustained any injuries. Another complaint by the Parent is that the Teaching Assistant does not ensure that the Child completes and submits work in time.

26. However the overall impression is that despite a very poor attendance record the Child has made good academic progress and has the potential to make further progress and to achieve academically.

27. The Appellant's argument is that the Child's chronic pain syndrome affects the daily activities to such an extent that the Child is simply unable at times to attend school.

28. The SALT indicated that in their view it was highly unrealistic to expect the Child to attend school on a regular basis because of the level of difficulties. The SALT stated that the unpredictability of the Child's condition makes it very difficult to provide structured support. The SALT suggested that one way to deal with the matter would be for the Child to attend school on three days and for the teacher to attend the home on the other two days. The SALT acknowledged that in making this proposal they were straying outside their area of expertise. However The Educational Psychologist then indicated that this proposal arose out of discussions between them and the SALT during the lunch break. A framework of this nature, it was said, would provide the school with a clear structure to move forward whilst also providing the Child with a degree of predictability in their educational programme, together with some flexibility.

29. There is however a consensus between the medical experts in the evidence provided that there is no medical reason why the Child should not attend school and indeed that the Child would benefit from attending. There is no evidence as to why the Child would benefit from home tuition of the nature suggested by the Parent as opposed to attending school other than as a matter of convenience. Indeed, if the pain and fatigue is too great for the Child to attend school then the Child is equally unlikely to benefit from direct one-to-one teaching at home. In addition it is completely impractical to expect a teacher to be on standby at short notice to attend the family home.

30. The tribunal was told that there is an SEN suite at school where the Child could rest. We understand that this option has not yet been tested. It is certainly a matter that needs to be considered in order to give the Child the opportunity to rest and recuperate at school rather than going home.

31. The tribunal was provided evidence of the qualifications of the Teaching Assistant and also heard how the teaching assistant is in a position to assist the Child by liaising directly with the teacher and collecting notes, acting as a scribe, carrying equipment for the Child and ensuring generally that the Child is able to catch up with lost work. The tribunal also heard that in year 10 there will be one subject less to follow, which will then provide an additional five hours a fortnight to catch up with missed work. The evidence shows that the Child is able to cope in class when the Child attends school with the aid of a laptop and also the assistance of the teaching assistant.

32. Arrangements are also in place for the Child to meet with a member of staff every morning so that any change in the routine is explained to the Child to enable them to settle into the school day. It is also noted that the Child has started violin lessons in school every Friday morning.

33. The tribunal heard that the LA provides the Child with a laptop for dedicated use at school, but that hitherto the Child has not been able to take it home because of insurance issues. The Parent was not inclined to maintain a home insurance policy of their own and did not see why they should bear the cost of insuring the LA's property. This problem should be resolved urgently. Once the Child has the use of a laptop at home then the school will be able to e-mail work to the Child.

34. The tribunal also addressed the provision of speech and language therapy. During the course of the hearing the parties agreed an appropriate form of wording for insertion in Part 2. The tribunal is content to accept that agreed wording as an appropriate description of the Child's communication difficulties. It is agreed that speech and language therapy is an educational need. The LA relies on the recommendations contained in the report submitted as late evidence. It is noted however that whilst it indicates that the Child would benefit from inclusion in a social communication group they do not contain such a provision in the recommendations. During the tribunal hearing the LA accepted that provision of a social skills group should be contained in Part 3 of the statement.

35. The SALT gave evidence to the tribunal based upon their assessment of the Child. The difference between the evidence of the two Speech and language therapists is very limited and the provision that they propose is similar when the LA's acceptance of the need for a social skills group is taken into account. In the circumstances the tribunal will adopt the wording of the SALT as advocated by the appellant as we consider that it more tightly drawn in terms of specification and quantification.

36. The provision of occupational therapy was also considered. Each party had filed a report and relied on the evidence contained in each report in support of its case. The LA challenged some aspects of the report in particular arguing that they had incorrectly reported the outcome of a questionnaire purportedly completed by the school SENCo. The SENCo was present at the tribunal and indicated that they had not completed a questionnaire. The SENCo suggested that they had incorrectly attributed the answers given by the Parents to a questionnaire about the Child's performance at home as having been given by the school. The SENCo also suggested that some of the conclusions drawn up were inconsistent.

37. In any event the tribunal is dependent upon the written evidence submitted and in the absence of any live occupational therapy evidence was unable to explore more fully the issues raised by the school. However the evidence given to the tribunal by the school suggests that the Child is similar to their peer group and that the description given of the Child in the report far more accurately reflects their performance in school. In the circumstances therefore the tribunal accepts the evidence.

38. To summarize therefore the tribunal is being asked to rewrite Part 2 of the statement and to consider the provision in Part 3 that is required to meet the needs identified in Part 2. It is not necessary to quote at length from reports as these reports are in any event appended to the statement.

39. In formulating the revised Part 2 the tribunal has considered the representations of the parties and the evidence contained in the bundle. A close analysis of the respective working documents reveal that the parties are not that far apart except that each is quoting from their own witnesses to the exclusion of the other side's evidence. There is nothing wrong however in making reference to contradictory evidence as part of the description.

40. The tribunal is being asked by the parties to remove the word 'Benign' from the description of the Child's medical needs. The tribunal does not however consider it appropriate to do so as, although there is some variation in the term used, the formal diagnosis that has been made is that of Benign Hypermobility Syndrome. That description should therefore remain.

41. The remainder of Part 2 has then been formulated in a manner which the tribunal considers best reflects the evidence given and the findings made in this decision.

42. The LA's working document contains an inordinately long list of objectives. The list that is proposed on behalf of the Child is far more realistic and achievable and will be written in to the statement.

43. The provision to be contained in Part 3 reflects the findings made in this decision.

44. The appeal will therefore be allowed to the extent set out above.

ORDER: Appeal allowed

Dated April 2011