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## **DECISION**

<b>Date of Birth:</b>	2001	
<b>Appeal of:</b>	The Parent	
<b>Type of Appeal:</b>	Against the contents of a statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of Hearing:</b>	2012	
<b>Persons Present:</b>	The Parent	<i>The Parent</i>
	The Parent's Representative	<i>Solicitor</i>
	The Parent's Witness	<i>Parental Support</i>
	The Local Authority Representative	<i>Educational Psychologist</i>
	The Local Authority Witness	<i>Occupational Therapist</i>

### **Appeal**

1. 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 (LA) for the Child. The Parent is supported by a friend.

### **Preliminary Issues**

2. The Tribunal allowed an application by the LA to admit two reports as late evidence pursuant to regulation 33(2) namely;
  - i. Occupational therapy report dated January 2012 compiled by an Occupational Therapist
  - ii. A Speech and Language therapy report dated January 2012 compiled by a Speech and Language TherapistBoth reports were served upon the Tribunal and the Parent more than five days before the hearing. It appears that the Appellant's Representative may not have received the Speech & Language therapy report outside the five day period but they did not object to the admission of the report in evidence.
3. The Parent asked the tribunal to admit the following reports as late evidence:
  - i. Speech and Language therapy report dated February 2012
  - ii. An undated occupational therapy report
  - iii. An educational psychology report dated January 2012
  - iv. A report from an Behavioural Optometrist dated February 2012

4. The first three reports referred to above were served by email on the tribunal and the LA in February 2012. The other two reports were made available on the day of the hearing.
5. The LA opposed the application to admit this evidence on the basis that they had not had sufficient opportunity to consider the contents. The LA also opposed the admission of the behavioural optometrist's report, as it had only been seen immediately prior to the hearing and the LA's representative had not had an opportunity to marshal any arguments in relation to the same. There was no objection by the LA to the admission of the report of the Annual Review in evidence.
6. The tribunal concluded that the circumstances of the case were wholly exceptional. It is accepted that every effort had been made to obtain these reports and that they had been written fairly promptly by the experts after the assessments have been undertaken. Although the time from service was short, the LA had received sufficient opportunity to consider the contents of the reports that had been served by e-mail in February. In addition the LA had expert witnesses present at the hearing who had presented reports of their own and were in a position to comment upon issues raised in those reports. It would not have been in the best interests of the Child or in the interests of justice to consider adjourning the appeal hearing to allow the parties' further time to consider the contents of these reports. Such an adjournment would also be disproportionate in terms of the cost involved.
7. The tribunal did not admit the report of the behavioural optometrist. It was clear that the LA had not had any time to consider the contents of this report and it would not be fair to allow the admission of this report in evidence. The Appellant's representative very fairly conceded that the Parent was not seeking to secure any provision arising out of the recommendations in this report.
8. The report of the Annual Review was admitted in evidence. It is appropriate for the tribunal to have up to date information, and the contents of the Annual Review report was uncontroversial. The LA did not oppose the admission of this evidence.
9. The Parental representatives had prepared a working document on the basis of recommendations in these reports on the assumption that these reports would be admitted as late evidence.
10. A direction was given at the conclusion of the hearing for the Appellant to file a composite working document identifying the areas of agreement and highlighting the aspects still in dispute. The working document was received as directed and is referred to in this decision.

### **Facts**

11. The Child was born in 2001. The appellant is the Parent.
12. The Child has a diagnosis of high functioning autism.

13. The Child attended School A in January 2004, and was referred to the Educational Psychology service in April 2005. A statutory assessment was started in October 2005
14. Upon conclusion of the assessment the LA declined to issue a statement but issued a Note in Lieu in July 2006 confirming the Child was to be supported at School Action Plus. The Child received five hours additional support, which was extended to fifteen hours per week additional support in November 2006.
15. In September 2007 the Child transferred to a learning support class at School B and was placed in a Key Stage 1 class for children with communication disorders.
16. Upon proceedings to Key Stage 2, the Child was placed in a learning support class for children with complex learning difficulties.
17. In October 2010 the Parent requested a re-assessment of the Child's special educational needs. The LA agreed to this request in December 2010 and a draft statement of special educational needs was issued March 2011.
18. In April 2011 the Child was diagnosed with developmental co-ordinations disorder.
19. A final statement of special educational needs was issued by the LA in September 2011. The Parent issued their appeal against Parts 2 & 3 of that statement in November 2011.
20. The Child is now in Year 6, but no secondary placement has yet been identified for the Child.

### **Tribunal's Decision with Reasons**

21. We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submission given at the hearing. We have also considered the relevant provisions of the Code of Practice for Wales 2002. We conclude as follows.
22. Following discussions between the parties agreement was reached in relation to most of Part 2 of the statement. The only outstanding issue in part 2 for the tribunal to adjudicate upon is the use of the word 'specific' to describe the Child's language difficulties. It is agreed that the Child has a number of language difficulties that are not in line with their overall ability. The evidence does not in the tribunals view establish that there is specific language difficulties as generally understood and therefore the word will be omitted from the relevant sentence. The remainder of the description will be adopted by the tribunal to form a revised Part 2 to the statement.

23. The parties were also able to make significant progress in agreeing the wording for Part 3 of the statement. The LA agrees the additional objectives proposed by the Parent and the tribunal is content to accept the proposed objectives as set out in the working document.
24. Under the heading Educational Provision to Meet Needs and Objectives the LA wish to include a reference to the Child receiving "Access to specialist staff who are experienced in meeting the needs of pupils with complex learning difficulties, including ASD". The Appellant considers this wording to be unnecessary as it repeats provision contained previously in Part 3 namely: "Placement in a small class environment with appropriately skilled and experience staff with a favourable staff: pupil ratio and a high level of supervision". The Tribunal does not consider that the inclusion of both sentences duplicates the provision as the emphasis in both sentences is difference. The first sentence refers to the whole class environment and the regular members of staff whilst the second sentence provides that the Child will have additional access to specialist staff as and when appropriate.
25. The Parent asks the tribunal to order that occupational therapy be provided as recommended by the Occupational Therapist in their report. The Occupational Therapists report is based upon an assessment session undertaken at home. It was undertaken on the same day as the Speech and Language Therapist undertook their Speech and language assessment.
26. The Occupational Therapist concludes that the occupational therapy is an educational need for the Child. The therapist identifies that the Child is having significant difficulties in accessing the curriculum. The Therapist endorses the diagnosis of developmental co-ordination disorder and considers that "this is affecting the Child in terms of accessing the curriculum as the Child struggles in many aspects of gross and fine motor skills, functional skills and also struggling with achieving the correct level of alertness for learning, due to an ongoing sensory processing disorder, modulation difficulties. There is a sensory base to the Child's motor co-ordination disorder."
27. In short the Occupational Therapist recommends inter alia i) 6 x45 minute sessions of direct therapy each term by an Occupational Therapist ii) 30 minutes of indirect occupational therapy to follow the direct sessions. iii) 30 minutes per day for the teaching assistant to deliver programmes iv) Sensory integrations therapy.
28. The Local Authority witness giving evidence for the LA confirmed that the Child had been seen by the Occupational Therapy service in January 2012. The Child was originally seen by the Paediatric Occupational Therapy service in January 2006 and was re referred in January 2011 due to concerns that the Child was unable to dress them self. Upon being assessed in January 2011 it notes that the Child was independent with cutlery, washing, buttons and toileting skills. A programme was provided to address dressing strategies, including tying of shoelaces and handwriting and ball skills.

29. When assessed in January 2012 it was found that the Child had improved manual dexterity although the Child continues to have difficulty with aiming and catching a ball. It was considered that the Child had specific difficulties with sensory processing. The Occupational Therapy service intends to visit the School to provide a programme to address the Child's sensory processing difficulties and then to review the Child in May/June prior to their transition to secondary education.
30. The LA acknowledges that Occupational Therapy is an educational need for the Child and that provision should be made in the Child's statement. In this regard the LA proposes an extended assessment over a six week period in order to formulate an intervention plan. It proposes that the Child should be reviewed following transfer to secondary school.
31. In addition the LA will offer the Child the opportunity to attend a summer holiday transition group. This group is run by the Occupational Therapy service over a 2-3 day period during the summer holiday which in effect will be equivalent of six sessions. It is anticipated that 4-5 children will attend this group which is intended to help to familiarise them with their new educational setting and to provide programmes and visual packs to take with them to their new school.
32. There is a great divergence in the assessments before the tribunal. The School does not however report great difficulties and the findings of the Occupational Therapist are seemingly at odds with the experience of the school and the Child's everyday functioning. It is agreed that the Child has sensory difficulties and the LA propose a programme to address these difficulties. The tribunal favours the approach of the LA in this case as it places the Child's needs in a school context and more accurately reflects the Child's current functioning at school. Given that the Child has difficulties in generalising what the Child has learnt then little benefit may be gained from withdrawal sessions. The LA's approach will also be beneficial as the Child approaches transition. The statement needs to be specific however and the tribunal considers that the LA's proposed provision should be amended to reflect that the Child will receive six sessions of Occupational Therapy to include therapy and assessment. The information gained from this class based approach will assist in further identifying the provision that may be required in the future.
33. It is agreed that Speech and Language Therapy is an educational need for the Child, and that provision is required in Part 3 of his statement. The Appellant relies on the report of the Educational Psychologist in support of their case and asks the tribunal to insert the provision recommended by the Educational Psychologist into Part 3 of the statement. The Educational Psychologist considers that the Child has an extremely spiky profile and that their language skills do not reflect the Child's cognitive abilities. In addition the Educational Psychologist considers that the Child has a range of social communication difficulties which affect the Child both at a verbal and non verbal level.

34. The Educational Psychologist inter alia one direct session of Speech and Language therapy a week for 30-40 minutes followed by 15-20 minutes to liaise with school staff. In addition the Speech and Language Therapist is to devise a programme to be delivered for 20-30 minutes daily by the Teaching Assistant. It is also proposed that the Child attends a social communication group on a weekly basis delivered by either a Speech and Language Therapist or a specialist teacher.
35. The Child had been discharged from the Speech and Language service following an assessment in January 2011 which suggested that the Child's language skills were in line with their overall ability. The Parent argued that this decision was based upon an incorrect cognitive assessment undertaken shortly before then. A private Educational Psychologist, saw the Child in January 2012 and found the child to be a child with some areas of average ability particularly in relation to perceptual reasoning. The Educational Psychologist encountered more difficulty in other areas such as elements of verbal comprehension and processing. In any event the LA agrees that the Speech and Language Therapy is an educational need and that provision must be made in the statement. There is also an acknowledgement that the Child's language skills are not in line with their overall ability.
36. Again in this case the outcome of the independent assessment differs greatly to that of the NHS Trust. The Speech and Language Therapist believed that functionally the Child's language is improving as demonstrated by the improvement in their scores. The Speech and Language Therapist stated however that the Child's scores will always be low as their difficulties are linked to the Child's diagnosis of ASD. The Speech and Language Therapist commented that the Child has a very robust basic vocabulary and is able to learn basic words. The Child's difficulties arise in linking those words.
37. In light of the differences between the findings of the NHS assessment and that of the independent practitioner that LA proposed that there should be a period of assessment during which the Child will also be provided with therapy. The Speech and Language Therapist proposes that there should be six school based sessions in order to inform the assessment process. The Speech and Language Therapist envisages doing direct work with the Child, observing in the classroom, trying out various strategies and modelling to the class teacher/teaching assistant. The Speech and Language Therapist considered that these sessions will lean heavily on the semantics side given that vocabulary forms such a huge area of the curriculum. The Speech and Language Therapist anticipates starting the work fairly promptly and undertaking weekly visits. This will enable the Speech and Language Therapist to consider any additional support that may be required for the teacher and also support the transition. It was confirmed that the Child will receive therapy as part of the Child's assessment process. The programme that is devised for the Child should be embedded into their curriculum and delivered on a daily basis throughout the school day.

38. It is agreed that the Child should partake in a social communication group.
39. The tribunal accepts the LA's argument that children on the autistic spectrum have difficulty in generalising skills to different contexts. It is not likely to be productive for any work undertaken with the Child to occur outside the classroom. The aim should be to deliver robust programmes which are embedded into the Child's learning programme.
40. The tribunal prefers the proposals of the LA in that they provide a targeted approach to the Child's learning needs within the classroom. This targeted approach will inform a school based programme which should be embedded in to the learning programme and delivered on a daily basis throughout the school day. It will also assist the transition process and provide strategies to assist with that process.
41. It is appropriate that the LA's proposed wording be amended to state that the six sessions that are envisaged will include therapy and assessment as indicated by the Speech and Language therapist. This approach will identify whether or not any additional support will be required in due course.
42. The tribunal will therefore amend the working document to reflect the findings above. Any consequential amendments that are required to the working document to reflect the above will also be made. On that basis and subject to the changes made, the tribunal is content to adopt the remainder of the working document which agreed between the parties as an appropriate form of wording for Part 3 of the statement.
43. The appeal is therefore allowed to the extent set out above.

**Order: Appeal allowed**

**Dated February 2012**

*Chair*

*Decision had amended statement attached*