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## **Decision**

<b>Date of Birth:</b>	2002	
<b>Appeal of:</b>	The Parents	
<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>	2011	
<b>Persons present:</b>	The Parent	<i>Parent</i>
	The Parent's Representative	<i>Legal Advisor</i>
	The Parent's Witness	<i>Educational Psychologist</i>
	The Parent's Witness	<i>Speech &amp; Language Therapist (SaLT)</i>

### **Appeal**

The Parents appeal under s.326 of the Education Act 1996 against the contents of an amended Statement of Special Educational Needs issued by the Local Authority (LA) in respect of the Child. The Statement is dated December 2010. The appeal is in respect of Parts 2 and 3 of the Statement.

### **Preliminary Issue**

By letter dated May 2011 the LA indicated that it did not oppose the appeal. By letter of May 2011 the LA provided the Tribunal with a proposed amended Statement dated May 2011 which incorporated some but not all of the amendments to the Childs' Statement being sought by the Parents. It did not provide a Case Statement in support. As directed by the Tribunal the parents prepared a working document of the Childs' Statement, taking into account the position of the Local Authority, to show areas of agreement and the outstanding areas of disagreement between the parties, dated October 2011.

Since May 2011 the LA has played no active part in the appeal. In line with Regulation 15 of the Special Educational Needs Tribunal Regulations 2001 it did not attend and was not represented at the hearing of the appeal.

The Tribunal was informed at the hearing that the Local Authority had provided the P Parent representative with a further proposed amended Statement in November 2011 to take account of the parental working document. The Tribunal was told that as a result there now appeared to be a large measure of agreement between the parties concerning Part 2 of the Childs' Statement, and some measure of agreement in respect of Part 3 provision, however there remained some areas still in dispute in respect of Part 3, particularly around the delivery of dyslexia support, speech and language therapy provision and occupational therapy provision.

It was decided that the parental working document would be used to inform discussions during the hearing and that changes set out in the Local Authority document of November 2011 would be considered alongside this.

## **Facts**

1. The Child was 9 years and 4 months old at the time of the hearing.
2. It is now agreed by the parties that the Child has special educational needs associated with Asperger's Syndrome, Sensory Processing Disorder, and Dyslexia. He also suffers from low self esteem. The Child has been assessed by LA Educational Psychologist and by the parentally instructed Educational Psychologist as having cognitive abilities that lie in the average range.
3. As a consequence of their special educational needs the Child's behaviour can be unpredictable and he sometimes responds to situations the Child finds difficult by becoming violent towards them self and others or by attempting to run away. The Child is reported to become frustrated with their difficulties and with the quality of their work and this places significant limitations on the Child's willingness to engage with learning tasks and on the Child's work output.
4. The Child attends School A. The Child has attended this School since May 2006 and the Child is now in Year 5. The School is a local maintained primary school. By use of split classes the School provides education principally in the mediums of both Welsh and English and the Child is taught in one of the principally English speaking class.
5. There is limited information concerning the School and the provision being made for the Child in the papers but the Parent told the Tribunal that the Child is being taught in a class of approximately 26 children. The Child's Class Teacher has taught the Child before. The Child has support from 2 Teaching Assistants. However, the Parent said that one TA has been off sick for some time and as a consequence the Child is mainly supported by the other TA at present. This support is supposed to be available for the Child throughout the school day (32.5 hours per week).
6. As far as the Parent is aware the Child does not have any additional direct input from any Local Authority specialists or from any NHS professionals at the present. The Parent understands that the Child is taking part in the Read, Write Inc scheme as are all children in the School. The Child is taught as part of a small group for these sessions and the Parent believes that the Child's group has support from one of the other TAs in the School. The School has been provided with a speech and language therapy programme for the Child following on from the assessment of NHS Specialist Speech and Language Therapist in May 2011. The Parent is not aware of any additional programmes of support being delivered to the Child in school.
7. The information that is available from the Child's School concerning provision suggests that the Child has received some additional withdrawal support for literacy and numeracy from the School SENCO and that the School has

periodically sought advice and support from the Local Authority Educational Psychology Service. It would appear that more recently advice has also been sought from the Local Authority Behaviour Support Team and from the Local Authority Autism Advisory Service. In addition an occupational therapy assessment was undertaken by an NHS Occupational Therapist in July 2010.

8. The SaLT (parent's witness) told the Tribunal that when they visited the School in September 2011 they were shown a quiet area annexed to the Childs' classroom which they were told is used by the School to offer the Child opportunities for time out when required.
9. The Parent told the Tribunal that the further NHS assessment of the Childs' language and communication skills initiated by Specialist NHS Speech and Language Therapists has not progressed beyond their initial assessment and report dated July 2011.
10. There is no information in the papers concerning the qualifications and training of the school staff involved in teaching the Child and neither is there any information concerning the School's expertise and experience in meeting the needs of children with difficulties similar to those of the Child. The Parent was not able to assist the Tribunal in this regard. However, the Educational Psychologist and the SaLT, who both visited School A as part of their assessments of the Child, told the Tribunal that they had been led to believe that school staff do not have any additional qualifications or specialist training in addressing the needs of children with Asperger's Syndrome or Sensory Processing Difficulties and they said that the School had not been clear about whether or not any staff have specialist training or qualifications in regard to Dyslexia.
11. The Parent told the Tribunal that the Child continues to be friends with 2 particular children; one is a girl in the year below the Child and the other is a boy in the Child's class. They said that they do not experience too many difficulties in the Child attending school. In their view the Child is good at Mental Maths and the Child appears to love the practical aspects of Science. They told the Tribunal that the Child gets particularly frustrated when the Child feels that they are not being understood and the Child also gets frustrated because they cannot read or write properly and the Child very much wants to be able to do so.
12. The Parent said that the Child makes a lot of use of their trampoline at home and this helps soothe the Child when the Child becomes frustrated. The Parent said that following the recommendations of Occupational Therapist they have purchased a hammock and this is also proving very effective in helping to keep the Child calm at home.
13. The Parent is concerned that the Child does not appear to be making any academic progress in school and the Parent feels that the Childs' behavioral difficulties are continuing to present themselves in school.
14. The Parent believes that the Childs' School needs help from a range of professionals to ensure that the Child is supported effectively so the Child can access the curriculum and learn. The Parent believes that the Childs literacy and

numeracy difficulties are such as to require direct and frequent input from a specialist teacher of dyslexia. The Parent also believes that the Childs' communication difficulties and their sensory integration difficulties and motor skills problems are such as to require direct input from a suitably qualified speech and language therapist and an occupational therapist. The Parent is mindful that the Child will transfer to secondary school in less than 2 years and they argue that it is vital that the Child is given these increased levels of support to help the Child make progress now and prepare the Child for transfer. The Parent believes that the Child requires full time TA support to cope in school but the Parent accepts that because of this 2 TAs will need to provide this support. The Parent also believes that it would be beneficial if the School informed them more about what is happening to the Child in school and involved them more frequently in matters concerning the Child.

15. The Parent is supported in their views by the Educational Psychologist, the SaLT and Occupational Therapist. The advice and recommendations of each is set out in reports dated June 2011, September 2011, and September 2011 respectively.
16. The Local Authority position is summarised in the Preliminary Issues section above.
17. The Childs views are recorded in the Annual Review Report of 2011. In this report in answer to a series of prompt questions the Child is recorded as saying they enjoy Science and that they think they have made progress in Maths in regard to addition. The Child says they do not like Welsh. The Child says that their TAs help them with their work and the Child likes having help and feels that they are getting enough. The Child says there is nothing they would like to achieve or improve in most and that the Child would like everything to stay the same.

### **Tribunal Conclusion and Reasons**

In reaching the decision the Tribunal carefully considered the written evidence submitted by the parties and the evidence given at the hearing. The Tribunal also considered relevant sections of the Education Act 1996 and the supporting Regulations and the relevant provisions of the Special Educational Needs Code of Practice for Wales.

- A. The Tribunal is always supportive of efforts made by the parties to an appeal to resolve the dispute between them and it commends the Local Authority in being ready to concede this appeal at an early stage. The Tribunal felt however that it would have been helpful in determining this appeal if the Local Authority had provided a Case Statement in support of the proposed amended Statement setting out details concerning School A and the provision being made for the Child and explaining the reasoning behind the further proposed amended Statement. The Tribunal considered that this was particularly so in a case such as this where the Local Authority agrees significant parts of the parental appeal but not all of the appeal in its entirety.

- B. The Tribunal was mindful that it has not had any detailed information from the Local Authority concerning School A, concerning the provision that is presently being made for the Child and details relating to how the School considers the Child is progressing. This information would have assisted the Tribunal in testing the evidence provided by the parent and her witnesses. The Tribunal took this into account when assessing all of the available evidence and in reaching the decision.
- C. Notwithstanding the point made above, the Tribunal would like to thank the Parent for the evidence they gave at the hearing. The Tribunal found the Parent to be a helpful witness and considered that they gave a measured account of the Child's difficulties and of their perception of how the Child is functioning at school and of the Child's relationship with the School.
- D. The Tribunal decided to endorse the agreements reached by the parties in respect of Part 2 of the Child's Statement, to include the additional agreed changes made by the Local Authority of November 2011, save that the Tribunal considered that the summary of the Child's needs at the end of Part 2 of the Statement should be placed at the beginning of Part 2. The Tribunal felt that this would serve to make the Child's needs clear to all professionals and staff using the Statement from the outset and would aid their understanding of the Statement as a whole.
- E. Bearing in mind that the Local Authority has conceded this case but has not agreed all aspects of the parental appeal and has not fully explained its position either in respect of its further proposed amended Statement or the very recent contribution it has proposed to the parental working document; for the sake of completeness and to ensure clarity and finality in this case, in regard to any outstanding issues between the parties in respect of Part 2 the Tribunal decided that the Child's Statement should reflect the position in the parental working document of September 2011 set out in Appendix A.
- F. In reaching the above decisions the Tribunal took account of the fact that since the Statement was amended in December 2010 and further amended in May 2011 the Child has been diagnosed by the local multi disciplinary NHS Autism Spectrum Disorder Panel as having Asperger's Syndrome; and the Child has had recent detailed assessments from the Educational Psychologist, Occupational Therapist and SaLT in regard to the Child's cognitive functioning, their motor skills and sensory integration skills and their speech, language and communication skills.
- G. Part 2 of the Child's Statement clearly needs to reflect the diagnosis of Asperger's Syndrome. It also needs to take account of the main conclusions of recent assessments. In the view of the Tribunal the main findings of these recent reports in regard to the Child's needs build on rather than contradict the findings set out in the Local Authority and NHS reports already provided as part of the Child's statutory assessment. The Tribunal concluded that the parental working document reflects the diagnosis of Asperger's Syndrome and the findings from the most recent reports.

- H. In respect of Part 3 provision, the Tribunal noted that the Local Authority Educational Psychologist states in their report of May 2009 that, “the Child possesses the underlying cognitive ability which would usually translate into academic success in school; however, there is clearly a barrier to him achieving this.” They also state that, “The Child has severe difficulties with their social interaction and communication skills and I feel that the Child’s presenting behavioral outbursts and idiosyncrasies are derivative of these underlying difficulties. The Child finds it difficult to know how to engage with others appropriately, and the Child has difficulty managing the resulting frustrations. In addition to this the Child shows high levels of impulsivity and has problems with focus and concentration. With such a complex profile the Child’s access to the learning environment is severely inhibited and therefore the Child’s acquisition of basic literacy and numeracy skills has been compromised.”
- I. Based on the evidence made available, the Tribunal was of the view that the difficulties described by the SaLT in 2009, as summarised above, remain largely unresolved in 2011. The Child has been identified as a child with average cognitive ability and yet the latest evidence available from their School, set out in the Annual Review Report of April 2011, suggests that the Child is still performing at National Curriculum Attainment Level 1 in English/Welsh, Maths and Science. The Annual Review Report also states that although the Child can contribute well verbally in class the Child is then reluctant to record their learning. The IEPs available in the bundle from 2006 to May 2011 also appear to support a lack of progress and an ongoing reluctance to engage in the recording of work. The Annual Review Report also indicates that there have been instances of the Child’s needs early in their school career and that TA support has been increased over time, advice has been provided from the Local Authority Educational Psychology Service, the Behaviour Support Team and the ASD Advisory Service and NHS Specialist Speech and Language Therapists and an Occupational Therapist have assessed the Child.
- J. In consequence of the above the Tribunal concluded that the Child is underperforming in school at the present time despite an increase in TA support and notwithstanding the efforts of his School and the various assessments and advices that have been provided by Local Authority and NHS professionals. The Tribunal accepted the argument of the Parent and the parentally instructed professionals therefore that the Child now requires a high level of direct professional input and that this input needs to be carefully coordinated. The Tribunal also accepted that the Child’s progress needs to be regularly monitored. The Tribunal bore in mind that the Child is due to transfer to secondary school in under 2 years time and it accepted the parental argument that a high level of support at this stage is likely to contribute to an improvement in the Child’s access to and engagement with the curriculum and an improvement in their behaviour, such that the Child can start to be prepared for secondary transfer in due course.
- K. Taking the above into account the Tribunal decided to endorse the agreements reached by the parties in respect of Part 3 of the Child’s Statement, to include the additional agreed changes made by the Local Authority of November 2011.

- L. Furthermore, in regard to provision for the Childs recognised dyslexia the Tribunal decided that it was necessary for a suitably qualified teacher of dyslexia to deliver the agreed programme to address the Childs literacy and numeracy problems. The evidence given by the Educational Psychologist at the hearing was that 3 or 4 short 20 – 30 minutes sessions would be of greater benefit to the Child than fewer longer sessions. The Tribunal decided that the number of sessions should be set at 3 per week bearing in mind that the additional speech and language and occupational therapy provision being ordered will result in the Child being withdrawn from a number of class based curriculum activities.
- M. In respect of speech and language therapy provision the Tribunal decided that it was necessary for the Child to be provided with direct speech and language therapy provision from a qualified speech and language therapist as recommended by the SaLT and as reflected in the parental working document. The Tribunal also agreed that the therapist should be included in target setting and in multi disciplinary monitoring of the Childs needs and in supporting school staff as recommended by the SaLT and as provided for in the parental working document.
- N. In relation to occupational therapy provision the Tribunal decided that it was necessary for the Child to be provided with direct provision from a qualified Occupational Therapist as recommended by the Occupational Therapist, also that the Occupational Therapist should be involved in training the Child TAs and school staff to deliver recommended programmes and that the Occupational Therapist should be actively engaged in the monitoring and review of the Childs needs and provision as reflected in the parental working document. The Tribunal also felt that it was appropriate to specify the equipment that the Occupational Therapist recommends as being required to help address the Childs sensory difficulties and handwriting problems.
- O. In respect of TA support it is now agreed that the Childs should have 32.5 hours per week of support and that TA's will be appropriately trained and qualified. The Parent accepts that this will mean that the Child will need more than 1 TA and this is reflected in agreed wording that has been included in Part 2 of the Statement. Given this the Tribunal takes the view that reference to "a" single TA in the paragraph describing TA provision should be changed to refer to TAs in the plural and the words "if the designated TA is absent....." should be changed to, "if one of the designated TAs is absent". Given that the Child has significant social communication needs and sensory processing difficulties and their behavior can be unpredictable the Tribunal felt that it was appropriate to stipulate that TA support should cover break times, lunch times and all unstructured times in addition to time in lessons.
- P. The Local Authority has agreed that an Educational Psychologist should be involved to advise and support the School on a half termly basis as recommended by the Educational Psychologist. In his evidence the Educational Psychologist explained to the Tribunal that he saw the Educational Psychologist as having a pivotal role in coordinating the work of the various professionals who should be working with the Child. Based on this the Tribunal felt that the paragraph which sets out the involvement of the Educational Psychologist would

be better placed in the Monitoring Section of the Statement at Part 3 c rather than in the Provision Section at Part 3 b.

- Q. The Tribunal noted that it has been agreed that there should be termly review of progress but given the number of professionals who will now be involved with the Child and given the importance in this case of coordinating the work being done so as to deliver maximum impact the Tribunal decided that at this point in time reviews should take place on a half termly basis. The Tribunal would expect the parent to be fully included in the review process.
- R. The Tribunal also noted that provision is made in the Statement for there to be close liaison between home and school. Clearly this is very important to ensure that a consistent approach is adopted and so that any concerns can be shared and quickly resolved. It was a concern of the Tribunal therefore that the Parent felt unsure about the additional provision that the Child is receiving in school and the Tribunal noted the Parents wish to receive clearer feedback from school. The Tribunal considered that in this case there should be greater specificity around how liaison could best be achieved and in addition to involving the parent fully in the half termly review process the Tribunal concluded that the Statement should stipulate that a home/school diary should be maintained relating to key incidents and events.
- S. In regard to any outstanding issues between the parties in respect of Part 3, and for the reasons outlined above in respect of Part 2 of the Statement, the Tribunal decided that the Childs Statement should reflect the position in the parental working document of September 2011 set out in Appendix A.

## **Order**

The appeal is upheld.

- i. By agreement the Local Authority is to amend Part 2 of the Childs Statement to reflect the agreement of the parties as set out in Appendix A and to include the additional agreed changes made by the Local Authority in November 2011.
- ii. By order of the Tribunal the Local Authority is to amend Part 2 of the Childs Statement so as to place the summary of the child's special educational needs at the beginning of Part 2 rather than at the end as set out in Appendix A and marked green.
- iii. By order of the Tribunal and in so far as there remain any disputed aspects to Part 2 of the child's Statement the Local Authority is to amend Part 2 to reflect the parental wording set out in Appendix A.
- iv. By agreement the Local Authority is to amend Part 3 of the Childs Statement to reflect the agreement of the parties as set out in Appendix A and to include the additional agreed changes made by the Local Authority on 10 November 2011.



- v. By order of the Tribunal the Local Authority is to amend Part 3 of the Childs Statement such that support for the child's dyslexia is in line with the parental wording as amended in part in green at Appendix A.
- vi. By order of the Tribunal in respect of speech and language therapy provision the Local Authority is to amend the Statement in line with the parental wording set out at Appendix A.
- vii. By order of the Tribunal in respect of occupational therapy provision the Local Authority is to amend the Statement in line with the parental wording set out at Appendix A.
- viii. By order of the Tribunal in respect of TA support the Local Authority is to amend the Statement in line with the parental wording as amended in part in green at Appendix A.
- ix. By order of the Tribunal the Local Authority is to amend the Statement to provide for half termly review as set out in Appendix A and marked in green.
- x. By order of the Tribunal the Local Authority is to amend the Statement to include a requirement that a home/school diary of key events and incidents is maintained as set out in Appendix A and marked in green.
- xi. By order of the Tribunal and in so far as there remain any disputed aspects to Part 3 of the child's Statement the Local Authority is to amend Part 3 to reflect the parental wording set out in Appendix A.

**Dated November 2011**

**Signed**

**Chair**