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DECISION

Date of Birth:	2004	
Appeal of:	The Parents	
Type of appeal:	Against the contents of a statement of SEN	
Against Decision of:	The Local Authority	
Date of hearing:	2012	
Persons present:	The Parent	<i>Parent</i>
	The Parent	<i>Parent</i>
	The Local Authority Representative	<i>Barrister</i>
	The Local Authority Witness	<i>Deputy Head Teacher, School A</i>
	The Local Authority Witness	<i>Speech & Language Therapist (SaLT)</i>

Appeal

1. The Parents appeal under section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by the LA for the child.

Preliminary Issues

2. The Parents applied to admit an e-mail dated the December 2011, being a response by the LA to a Freedom of Information Act request by the Parents. This request was for details of costs incurred by the LA in the instruction of counsel in connection with appeals to SENTW. The LA did not consider this evidence to be relevant to this appeal but in the event of the details being admitted the LA asked that the tribunal should consider additional information not contained in the e-mail in order to provide full information.
3. The LA applied to admit an e-mail from a Child Physiotherapist dated December 2011 and an e-mail of the same date from a Paediatric Occupational Therapist. The parents had been served with copies of these e-mails and did not object to the admission of both documents in evidence.
4. The tribunal concluded that the requirements of regulation 33(2) were satisfied in respect of each application. In respect of the Parents' application it would be a matter for the tribunal to decide what weight if any should be placed on the information disclosed pursuant to the FOA request. The tribunal concluded that it was in the interests of justice in particular for the information from the physiotherapist and occupational therapist to be made

available in the absence of any other recent evidence. The applications were granted.

Facts

5. The Child was born in 2004 and is now seven years of age. The appellants are her parents.
6. The Child has special educational needs associated with Down's syndrome, sensory processing disorder and global delay.
7. A statement of special educational needs was first written for the Child in January 2008. Following an annual review in 2011 the LA issued an amended statement in July 2011 which led to the issue of this appeal by the parents in September 2011.
8. The Child is currently placed in the reception class at School A. It is common ground that the Child is appropriately placed.
9. The Parents now appeal against parts 2 and 3 of the statement of July 2011.

Tribunal's Decision with Reasons

10. 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.
11. The Parents indicated to the tribunal that they disagreed with most of wording in part 2 of the current statement. They had not prior to the hearing provided any alternative proposed wording to the LA or to the tribunal. In the circumstances the hearing was adjourned and the parties invited to jointly consider an appropriate form of wording for part 2. As a result of those discussions and further discussions later in the day the wording for part 2 was virtually agreed. The only outstanding issue was that the LA wanted to include a sentence indicating that the child had been discharged by the occupational therapy service. The Parents objected to the inclusion of this sentence as they contended that the sentence related to provision and was not a description of needs. It is the case however that the Child was discharged by Occupational Therapy service some time following the annual review in June 2011. This sentence is not a description of provision and it is useful for it to be included to place the description of the Child's occupational therapy needs in context. Subject to the tribunal's finding on that one issue, the agreed wording will be adopted by the tribunal to replace the existing part

The form of wording for part 2 is contained in full in this decision. Part 2 of the statement now provides an updated and current description of the Child's special educational needs.

12. In relation to part 3 of the statement the parents' case was addressed in four parts, namely :
 - i. Speech and language therapy
 - ii. Occupational therapy
 - iii. Physiotherapy
 - iv. Quantification of time spent by the Teaching Assistant in delivering the therapy programmes

13. The Child has attended School A since October 2010. The tribunal heard from the Deputy Head Teacher that the Child is making good progress at school. At present the Child is placed in the reception class, which is some twenty four months behind the Child's chronological age. The Child is described as being a delightful pupil; the Child has formed good relationships and responds well to a settled and structured system. The Child has forged a good relationship with their teaching assistant and is also developing their signing and is using Welsh phrases. The school is following a total communication approach to which the Child responds well. The Child's teaching assistant delivers the speech and language therapy programmes together with the occupational therapy and physiotherapy programmes on an individual basis throughout the school day. The Parents agreed with the Deputy Head Teachers assessment of the Child's progress and both explained that they were extremely happy with the provision made by the school and the manner in which the child was included as part of the school.

14. In relation to the provision of speech and language therapy the Parents seek the following provision, namely :
 - i. Thirty minutes individual speech and language therapy a week delivered by a Speech and Language Therapist
 - ii. Daily implementation of a speech and language therapy programme by an ELKLAN trained teaching assistant and the class teacher
 - iii. Monthly reviews by the Speech and Language Therapist
 - iv. The provision as set out in numbers ii and iii above is already being delivered at School A as acknowledged by the parents. The Parents however seek specification and quantification of this provision in the statement. On several occasions during the tribunal the Parents referred to the lack of provision that had been delivered in previous years and their belief that the current provision was only in place because of their efforts. As such they were concerned to avoid a similar situation developing when the Child was not receiving the therapy programmes that she needed.

15. The LA Witness (SaLT), acknowledged that there had been difficulties with the provision of speech and language therapy, and that the performance of the service had not been adequate, but that steps had now been taken to address those deficiencies. It is not a matter for this tribunal to enquire into past events, but it was now common ground that appropriate speech and language therapy provision was now in place and that monthly visits to the school were now being undertaken by the Speech and Language Therapist. A change of Speech and Language Therapist allocated to the Child had been welcomed by the parents. After discussions between the parties the Speech and Language Therapist was now attending school on a monthly basis for the remainder of this term with the intention that there be half- termly visits thereafter.
16. Since the Child has been attending School A they have made good progress with their speech and communication. The tribunal was informed that the programmes are being delivered by the Child's teaching assistant on a daily basis and often frequently throughout the day.
17. The parents had in their case statement produced various documents which they argued supported their contention that the Child should receive direct speech and language therapy in addition to the provision already in place. The Parents relied upon a series of publications published by amongst others the Down's syndrome Association. These documents are listed in an appendix to a letter dated November 2009 sent by the Parents to the head of Children's Services at the LA. The list appears at page 140 of the bundle. In particular the parents refer to the guidance set out in a document entitled "Sharing Best Practice in the SEND Process". This is a document published in 2009 jointly by the Royal College of Speech and Language Therapists and the Association of Speech and Language Therapists in Independent Practice. The Parents drew the panel's attention to the various sections in this guidance which in their view sets out best practice for the provision of speech and language therapy. This guidance highlights the need for early intervention and for direct speech and language therapy on a regular basis.
18. The LA Witness (SaLT) confirmed that the Speech and Language Therapy Service had taken account of the guidance issued in relation to provision for children with Down's syndrome when preparing its strategy for the Child. The SaLT stated that they remained of the view that the provision now in place was appropriate to meet the Child's current needs. Whilst the SaLT acknowledged that the model of delivery employed by their service did not provide for direct speech and language therapy, they indicated that the Speech and Language Therapy Service would be in a position to provide

direct speech and language therapy if the need arose at any time. The Child has in the past received six weekly blocks of direct speech and language therapy, although the SaLT was not entirely in favour of such provision as it was not always well timed or directed at the relevant need.

19. The Child has also received direct speech and language therapy from an independent Speech and Language Therapist. A report by the independent SaLT dated November 2010 contains some recommendations. The LA Witness (SaLT) in their evidence indicated that much of what was recommended by the independent Speech and Language Therapist was now being provided to the Child in any event. The tribunal was told that the Child has not received direct speech and language therapy from the independent SaLT since around the summer of 2010, which pre-dates the Child admission to School A. It is noted therefore that the progress made by the Child since attending School A has been through the consultative model of delivery employed by the Speech and Language Therapy service and the programmes being delivered by the Child's Teaching Assistant.
20. The tribunal has very carefully considered all the information and documentation provided by the Parents. However the information contained in these documents amounts to no more than general guidance and is not in any way specific to the Child. The evidence that is specific to the Child demonstrates that progress is being made through the provision currently in place. This tribunal therefore concludes that the speech and language therapy provision currently in place is meeting the Child's needs.
21. The SaLT assured the tribunal that their service would be prepared to provide direct speech and language therapy should the need arise in future. The tribunal realises that the parents contend that the Speech and Language Therapy service has not responded appropriately in the past, but the tribunal is confident that the school will refer any issues of concern to the speech and language therapy service should the need arise.
22. The tribunal was informed that the Teaching Assistant currently working with the Child is ELKLAN level 3 trained and has an advanced qualification in Signalong. The Deputy Head teacher of School A also confirmed that four other members of staff are ELKLAN trained to a similar level and as a contingency in the event of the Child's Teaching Assistant not being present, as happened recently, then another suitably qualified member of staff is available to deliver the relevant programmes throughout the day.
23. On the basis of the documentary evidence and the evidence given by the Deputy Head Teacher and the SaLT, the tribunal finds that speech and

language therapy is an educational need and that the current programmes are meeting the Child's needs and enabling her to make progress. The tribunal accepts, given the support that is in place within the school, that it is appropriate that visits from the Speech and Language Therapist should occur on a half-termly basis rather than on a monthly basis from next term onwards. The tribunal is satisfied that the school will consult with the Speech and Language Therapist in the event of more frequent visits being required. Given the progress that has been made and the manner in which the programmes are currently being delivered the tribunal does not consider that direct therapy from a Speech and Language Therapist is presently an educational need.

24. In so far as quantifying the speech and language provision is concerned the tribunal accepts to an extent the argument of the parents. The provision should be quantified and as such the statement shall be amended to reflect a minimum frequency for visits by the Speech and Language Therapist and a minimum duration for those visits. It was noted in evidence that the therapist spends at least an hour and a quarter if not longer on their visit to the school. As such, the monthly visits will be specified to be of at least an hour's duration and also the frequency of the visits will be specified to be half-termly as a minimum. The Parents also requested that the Speech and Language Therapist should demonstrate to staff how to implement the programmes. It is appropriate that a demonstration be given on at least a half termly basis to coincide with the visit to the school.
25. The LA produced an e-mail from a Children's Physiotherapist, by way of late evidence. The Physiotherapist's view is that the current level of physiotherapy input that the Child is receiving is appropriate to their physical needs. The physiotherapist also indicated that half termly reviews were no longer required although given that the Physiotherapist proposes reviewing the child again in Spring 2012 it is assumed that the physiotherapist will continue to make termly reviews.
26. The Deputy Head Teacher confirmed that the physiotherapy programmes are delivered on a one to one basis by the Teaching Assistant and also during PE lessons. The Deputy Head Teacher confirmed that the child requires lots of gross and fine motor physical exercises specific to their needs. The Deputy Head Teacher is satisfied that the current programme is appropriate for the Child's needs.
27. The Parents want half termly school reviews together with the provision of rebound therapy. The Parents confirmed that the child received a block of rebound therapy about two years ago. The Deputy Head Teacher indicated

that they did not have the expertise to comment upon the need for rebound therapy. There is no reference to this provision in the review by the physiotherapist or in her report to the Annual Review dated June 2011. In the absence of any other evidence the tribunal concludes that physiotherapy remains an educational need and that the current provision is meeting the Child's needs. It is appropriate for the physiotherapy provision as currently set out in the statement to remain, although there will be a reference to the physiotherapist making a termly visit to the school to review the programmes.

28. The late evidence from the Occupational Therapy Service confirms that the child had been discharged from that service. Although the date of discharge is not specified it appears to have occurred some time after the annual review in June 2011. The Occupational Therapy Service was not present at that review. It is acknowledged by the LA that occupational therapy remains an educational need, hence the provision contained in the statement. The Deputy Head Teacher confirmed that the school continues to deliver the programmes provided by the Occupational Therapy Service.
29. The child has sensory processing difficulties and the Child has difficulties with fine motor skills, use of cutlery, dressing them self and self-help skills. The Parents contend that the Child requires half termly visits by the occupational therapist, who should also demonstrate the strategies to the school staff.
30. The Deputy Head Teacher endorses the Parents' view that the Child's sensory processing difficulties' impact upon every aspect of the Child's day. The Deputy Head Teacher confirmed that the Occupational Therapy programmes are delivered every day and often up to three to four times a day. The Child also makes use of the weighted belt prescribed by the Occupational Therapy Service, usually during structured sessions. The Deputy Head Teacher confirmed however that progress was not being made in terms of the Child's sensory processing and that the Child requires a lot of feedback from their environment and always needs to know where they are in their environment. The Deputy Head Teacher gave the example that the child sometimes pulls other pupils' hair. They also highlighted that the Child's fine motor skills and self-help skills are a major area of concern. Whilst the strategies are being implemented they do not appear to be reaping any visible benefits. The school is aware that they are able to re-refer the Child to the Occupational Therapy Service at any time. The Deputy Head Teacher confirmed in their evidence that if the parents so requested then a further referral to the service would be made. The parent suggested that it might be appropriate for a referral to be made to the Occupational Therapy Service.

31. The evidence before the tribunal in relation to occupational therapy is limited. The tribunal finds that occupational therapy is an educational need given that the Child continues to be provided with programmes on a daily basis. However in light of the fact that the Child has been discharged from the Service and no re-referral has yet been made, the tribunal is not in a position to specify any additional provision in terms of visits to the school by the Occupational Therapist.
32. Whilst there is no dispute between the parties with regard to the support provided by the Teaching Assistant, the parents are anxious to ensure that the time spent by the teaching assistant in delivering the therapy programmes on a weekly basis is quantified. They acknowledge that the programmes are being appropriately delivered at present, but their concern is to ensure that there should be no misunderstanding in relation to the delivery of the programmes in the event of a change in personnel within the school. Whilst the LA in its case statement suggests that it is not appropriate to quantify the time spent by the Teaching Assistant in delivering the therapy programmes, the Deputy Head Teacher considered that it was possible to quantify a minimum number of hours each week. They quantified the delivery of the occupational therapy and physiotherapy programmes as being a minimum of five hours a week, delivered on a one to one basis. This might take place on a withdrawal basis or in a class environment. They quantified the delivery of the speech and language programmes on a one to one basis as being for no less than two and a half hours per week. The tribunal considers that it is appropriate for the quantification to be phrased as a minimum number of hours each week as this continues to allow the Teaching Assistant sufficient flexibility in the implementation of the programmes during the school week.
33. Unfortunately there has been a breakdown in communication between the LA and the Parents, but it is not for the tribunal to apportion blame. The tribunal finds that the provision required to meet the Child's needs is currently being delivered at School A, and it is only to be hoped that both parties can begin to forge a working relationship in order to ensure that the school is fully supported in its efforts to ensure that the child realises their potential.
34. Changes have been made to part 3 of the statement to record findings made in this Decision. Part 3 will be changed in parts to record a minimum frequency and duration for school visits. A minimum period of time to be spent by the Teaching Assistant in delivering the programmes is also included. The tribunal is content that the evidence shows that the Child is currently receiving the provision required to meet their special educational needs. The tribunal hopes that the Child continues to make progress.

35. The appeal is allowed to the extent set out above.

ORDER: Appeal allowed

Dated January 2012

Chair

(Amended statement wording was attached)