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## **DECISION**

<b>Date of Birth:</b>	2006	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Contents of a Statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of hearing:</b>	2013	
<b>Persons Present:</b>	The Parents	<i>Parents</i>
	Parents Representative	<i>Solicitor</i>
	Parents Witness	<i>SALT</i>
	LA Representative	<i>Educational Psychologist</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 Local Authority for their Child.

### **Preliminary Issues**

2. The Parents submitted an assessment report from the Ear Foundation for admission as late evidence. This report contained assessments by a Teacher of the Deaf, a Speech and Language Therapist and an Educational Psychologist and incorporated their joint recommendations. The criteria for admission under regulation 50(a) were satisfied and therefore the application was granted.
3. A working document was submitted on behalf of the Parents setting out the wording requested by the parents in Part 2 and the provision sought in Part 3 of a revised statement. An e-mail was received from the Parental Representative following the hearing setting out various issues purportedly agreed between the parents and the LA prior to the hearing. It is not appropriate for the tribunal to take into account documentation and information submitted following the conclusion of the appeal hearing unless specific permission has been granted during the hearing. The issues raised in the documentation were canvassed during the hearing in any event.

## **Facts**

4. The Child was born in March 2006 and is now seven years and two months of age. The appellants are the Child's Parents.
5. A statutory assessment of the Child's special educational needs was undertaken in 2009 leading to the issue of a statement of special educational needs in October 2009.
6. The Child was diagnosed in 2010 with moderate bi-lateral sensorineural hearing loss. The Child also suffers with bi-lateral middle ear effusion. The Child wears two hearing aids constantly, and was provided with a radio aid system in November 2011. An assessment in December 2012 indicates that the Child has a severe/profound mixed hearing loss.
7. The Child initially attended School A before transferring to the specialist teaching facility for the hearing impaired at School B in September 2011.
8. In November 2011 the Child was provided with fifteen hours per week teaching assistant support to facilitate the delivery of the Child's educational programmes.
9. Following the annual review in June 2012 an amended statement of special educational needs was issued in August 2012. The Parents were unhappy with the contents of the statement and issued an appeal against parts 2 and 3 in October 2012. In particular the Parents require the specification and quantification of speech and language therapy provision for the Child.
10. In deciding this appeal the tribunal is empowered to dismiss the appeal or to direct the LA to amend parts 2 and/or 3 of the statement.

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

11. 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.
12. The Parents case is set out in a working document prepared by their Representative. The amendments sought to parts 2 and 3 of the statement are based upon the findings and recommendations of the assessment report provided by the Ear Foundation.

13. The LA Representative confirmed that the LA accept the findings of the Ear Foundation, but disagree with the recommendations in terms of the quantification of the speech and language provision.
14. In so far as part 2 is concerned, the parents invite the tribunal to adopt the working document. The LA Representative argues that although the LA accept the contents of the assessment, it is not necessary to repeat extracts from the assessment in part 2 and that the LA prefer a more concise description of a child's special educational needs in Part 2. The LA Representative relies on the description contained in the draft revised statement filed by the LA.
15. The Code of Practice specifies that part 2 of a statement:  
*"should describe all the child's learning difficulties identified during the statutory assessment. It should also include a description of the child's current functioning – what the child can and cannot do."*

The Code at paragraph 8.32 also states that:

*"The description in part 2 should draw on and may refer to the professional advice attached in the appendices"*.

In this instance the Ear Foundation's assessment report will form part of the appendices and it is not therefore necessary to quote at length from this report.

16. The tribunal heard submissions from both parties in relation to the issue, although the Parent Representative accepted that a shortened version of the working document would be acceptable. The parties confirmed that they were content to allow the tribunal to formulate the wording for Part 2 on the basis of the evidence available.
17. In the circumstances therefore the tribunal has considered all the evidence and has formulated wording for Part 2 that is set out below. This wording has taken into account the submissions of the parties and has sought to provide a comprehensive yet concise description of the Child's special educational needs. Reference should always be made to the documents contained in the appendix in order to obtain more detailed information. It is slightly shorter than the version proposed by the Parents, but longer than the original description contained in the statement under appeal.
18. One significant feature of the recent assessment is the suggestion that the Child is performing at a higher level in terms of their non-verbal skills than previous assessments suggest. The tribunal has adopted the wording proposed by the LA Representative in this regard for inclusion in Part 2, namely "Recent cognitive assessment in February 2013 suggests that the

Child is performing within the low average range in relation to non-verbal skills. This is at a significantly higher level than previous assessments had suggested”.

19. The parties were able to agree the wording for most of the provision contained in Part 3 of the revised statement. The tribunal is content to adopt the wording agreed as it reflects appropriate provision to meet the Child’s identified needs.
20. The objectives are enlarged by adding the following objectives :
  - > Develop self-help and independence skills
  - > Develop speech production skills
  - > Develop attention and listening skills by maximising the use of residual hearing.

These additional objectives reflect recommendations contained in the reports and are incorporated by agreement. One existing objective is varied so as to read “Develop social communication skills”.

The remainder of the wording for Part 3 was agreed between the parties, save for the provision of speech and language therapy. In effect therefore the only issue for tribunal to adjudicate upon is the amount of speech and language therapy provision that the Child requires. The parties agree that speech and language therapy is an educational need and that the Child requires speech and language therapy delivered on a one to one basis by a speech and language therapist on a regular basis.

21. Since September 2011 the Child has attended a specialist training facility for the hearing impaired at School B. The Child is one of ten pupils in this unit, two of whom are of nursery age. The unit is staffed by one full time equivalent teacher of the deaf, one nursery nurse and two teaching assistants working twenty-seven and a half hours. Additional support is provided for a total of sixty-five hours per week by four teaching assistants. Since November 2011 the Child has received fifteen hours additional support including full time support during lunch times. The Child requires careful supervision at unstructured times due to their small stature and as the Child is unsteady on their feet. The Child is also supported by a teaching assistant when they enter the mainstream for around a quarter of the school week.
22. In the statement under appeal the speech and language provision is set out as follows;

*The Child’s speech and language needs can be met with:-*

- *A programme of activities reviewed twice yearly in discussion*

*with the class teacher, SENCo.*

- *A review of IEP targets following this discussion.*
- *Liaison with Parents to discuss any proposals resulting from the discussion.*
- *Verbal or written contribution to the annual review.*

23. This description contains no quantification or specification of the speech and language provision. In a proposed statement contained within its case statement the LA amends its position by proposing that the Child should receive 12 hours of speech and language therapy support per year provided by the Specialist Speech and Language and Communication team.
24. Having considered the evidence from the Ear Foundation, and in particular the indication that the Child has the potential to make greater progress than originally thought to be the case, the LA now propose that the Child should receive 21 hours of support per annum from the Specialist Speech Language and Communication team. This support comprises 15 hours per annum of direct one-to-one therapy provided by a speech and language therapist and 2 hours per term of indirect therapy, which includes liaison, programme and report writing.
25. The LA considers that the Child is making slow and steady progress in the Unit. There has been rapid growth in the Child's vocabulary and the Child is now using vocabulary in short phrases. The Child uses language to comment and speech to communicate with others. One important feature is that the Child needs to be given time to respond. It is clear from the assessments that the Child persists in their tasks and demonstrates good concentration and attention.
26. The Parents agree that the Child is making progress, although the Parent attributes the development in part to the influence of a new teacher whom they consider displays greater knowledge of the Child's other needs. In any event the Parents accepted that the Child is appropriately placed subject to provision being made for speech and language therapy. The Parents confirm that the Child is happy in their current placement although at present the Child accesses the mainstream at a level two years behind their peers.
27. The Parents rely on the joint recommendations made by the persons who assessed the Child at the Ear Foundation. In essence this provides for one hour of direct speech and language therapy by a speech and language therapist each week. This amounts to 40 hours direct speech and language therapy per year. The proposal also requires a specialist teaching assistant to observe the therapy and to provide follow up activities on a daily basis in 15 minute sessions. It is also argued that the Speech and Language

Therapist requires further 10 hours annually covering meetings, reports and liaison.

28. It was acknowledged by the Speech and Language Therapist during their evidence that the assessment of the Child was undertaken outside a school environment and that they were not familiar with the unit that the Child currently attends. The SALT highlighted their concern that the Child's hearing loss had been diagnosed very late and that as a result the Child had a significant gap to close. The SALT felt that it was difficult to quantify the Child's rate of progress but from the available evidence she saw a child who was not reaching their potential. In order to do so and to close the gap with peers the Child requires sensitive one to one therapy, from a therapist, fed through the whole of the Child's curriculum. The SALT considers that the Child's needs would best be met by receiving two thirty minute sessions of direct speech and language therapy from a therapist each week. On the basis of a forty week academic year the SALT quantifies this as 40 hours per annum. In addition 40 hours of follow work by a specialist teaching assistant is required together with 10 hours per annum for report writing and a further 6 hours to review targets.
29. In formulating their recommendations the SALT acknowledges that they have no concrete knowledge of the provision that the Child currently receives and neither do the recommendations take account of the Child's current educational setting.
30. The LA indicated that they were happy to accept the findings in the Speech and Language therapy assessment presented by the Ear Foundation as they correlate with those of the LA. The LA confirmed that the Child had been provided with direct speech and language therapy within the unit, notwithstanding the absence of specific provision in the statement under appeal. There is currently however a hiatus as the therapist has left the post and a new appointment has not yet been made, although it is apparently imminent. It is therefore unclear what if any speech and language therapy the Child currently receives.
31. The LA acknowledges that the Child requires regular speech and language therapy but that the provision needs to be formulated within the context that the Child is placed within a specialist unit for the hearing impaired. The whole school environment is geared towards the teaching of language by specialist staff working as a team. Speech and language therapy is therefore delivered as part of a daily routine. In effect therefore the speech and language therapy is fed through the whole of the curriculum.
32. The SALT therefore assesses that the Child's needs can be met through the provision of 5 hours of direct therapy per term. This is calculated on the

basis that the provision will more or less be delivered weekly for 30 minutes. The SALT estimates, when taking into account absences and other school activities that there will be 10 sessions per term. They further estimate that the report and programme writing and the necessary liaison work can be undertaken in 2 hours per term. The SALT confirms that there is an element of flexibility, according to need, in the time that a therapist devotes to each child.

33. The Parents asked to be involved in some of the sessions so that the programmes and strategies could be modelled to them. The LA agreed that this could be arranged.
34. The tribunal is pleased to note that there is a consensus that the Child is happy at school and is making progress. The tribunal notes with some concern that Local Authority educational psychology assessments undertaken previously appear to make no allowance for hearing impairment or for tremor which will certainly have had an impact upon some aspects of those assessments. The latest cognitive assessment undertaken in February 2013 suggest that in relation to the Child's non-verbal skills the Child is performing at a significantly higher level than previously thought to be the case. It is pleasing that the LA accept these findings. It demonstrates that the Child does have the potential to make progress provided that the Child has the appropriate support.
35. The parties acknowledge, as does the tribunal, the importance of direct and regular input to support the Child's language development. The parties disagree on the quantification of this support.
36. Of fundamental significance in this case is the educational placement. The Child is placed in a unit where the whole environment is geared towards language development. The unit is staffed by persons who have been provided with appropriate training to ensure that language and communication programmes are embedded in the curriculum and delivered throughout the school day.
37. The recommendations for the level of support proposed by the Ear Foundation are not made in context. The assessment of the Child did not occur within the Child's school environment and the authors of the report did not have the benefit of observing the Child at school or of inspecting the teaching facility. This is not intended as criticism but merely a statement of fact. In the view of the tribunal, context is all important and the level of provision must be formulated on the basis that the Child is placed in a specialist facility.

38. Much of what is proposed in terms of the school environment, the qualifications of the staff and the direct teaching by a teacher of the deaf is already in place within the specialist facility for the hearing impaired. The tribunal considers that the number of hours of therapy proposed on behalf of the Parents is disproportionate given the nature of the placement.
39. The tribunal accepts the rationale of the LA in terms of the Child receiving one session of direct therapy each week, but considers that in suggesting 10 sessions per term that the number of available weeks is underestimated. It is accepted that the direct therapy needs to be delivered regularly and it is important that momentum is maintained for continued progress. It is accepted that there will be periods of absences either through illness or through other school activities but given that they are around 38 weeks per academic year then the level of provision is best expressed as being 6 x 30 minute sessions per half term. This equates to 18 hours of direct speech and language therapy per annum. The tribunal accepts that the estimate of the time required for the indirect therapy is realistic and therefore in addition there will be 6 hours of indirect therapy per annum to allow for report and programme writing and liaison. This makes a total of 24 hours per annum of speech and language therapy.
40. In writing this provision into Part 3 of the Child's statement the tribunal adopts the framework of the wording contained in the working document as it more precisely defines the support that is to be provided. The tribunal is satisfied that teaching assistant support is available within the unit to observe the weekly direct therapy sessions and to provide the follow up work during the week.
41. The Parents mentioned on more than one occasion during the tribunal hearing that they were unaware of developments at school. Whatever the reasons for this it is hoped that some further thought and attention can be given to how to improve and maintain the home/school liaison and to ensure that the Parents have the opportunity to observe the direct therapy sessions. It is vital that that there is a coordinated and coherent approach to the Child's education and development as the Child progresses through the school.
42. For the reasons stated the appeal will be allowed and Parts 2 and 3 of the statement shall be amended in parts to reflect the agreement of the parties and where appropriate the findings of this tribunal.

**Appeal Allowed**

**Dated May 2013**