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Decision

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| Date of Birth: | 2001 | |
| Appeal of: | The Parents | |
| Type of Appeal: | Contents of a Statement of SEN | |
| Against Decision of: | Local Authority | |
| Date of Hearing: | 2011 | |
| Persons Present: | The Parents | <i>Parents</i> |
| | Parents Representative | <i>Solicitor</i> |
| | Parents Witness | <i>Educational Psychologist</i> |
| | LA Representative | <i>Representative</i> |
| | LA Witness | <i>Head of Inclusion</i> |
| | LA Witness | <i>Teacher</i> |

Appeal

The Parents appeal under s.326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs issued by the Local Authority in respect of their Child. The Statement is dated in 2011. The appeal is in respect of Parts 2 and 3 of the Statement.

Preliminary Issues

- The Local Authority indicated in its Case Statement that it would ask the Tribunal to make an order that there should be a reassessment of the Child's special educational needs. This application was not pursued by the Local Authority representative at the hearing.
- The Parents applied to admit late evidence under s.33 (2) of the Special Educational Needs Tribunal Regulations 2001 in respect of a report from an Educational Psychologist dated May 2011. The report was submitted to the Tribunal and served upon the Local Authority also in May 2011. The Local Authority did not object to the admission of the Report. The Tribunal decided to admit the report as it considered that the criteria set out in s.33 (2) of the Regulations were met.
- The Parents submitted a working document to the Tribunal and the Local Authority which was received in May 2011. The Local Authority did not object to the admission of the document and the parties were in agreement that the document should be used to inform discussions at the hearing. The Tribunal decided to accept the document into evidence under s.33 (2) of the Special Educational Needs Tribunal Regulations 2001.

Facts

1. The Child was 10 years and nearly 2 months old at the time of the hearing.
2. It is agreed that the Child has specific learning difficulties which have resulted in the Child experiencing difficulties in acquiring age appropriate literacy and numeracy skills.
3. The Child attends School A. This school is maintained by the Local Authority. It is a school in which the curriculum is primarily delivered through the medium of English. The Child is presently in Year 5 of the School. The Child transferred to the School in June 2008. The Child moved from School B where the curriculum is principally delivered through the medium of Welsh.
4. The Child is in a class of 27 pupils. The class is a mixed Year 5 and 6 groups. It is a booster class and is made up of mainstream pupils whom the School believes would benefit from additional support. The Teacher told the Tribunal that currently there are two children with Statements in the class, one of whom is the Child. In addition 11 children are receiving support at the School Action Plus Stage of the Code of Practice and 7 are receiving support at the School Action Stage of the Code. The Teacher said that of these children, 8 have specific learning difficulties, 1 has autism, and the others have moderate learning difficulties. The remaining children in the class are not on the School's register of special educational needs. The class has additional LSA support. The Teacher said that there is a parallel Year 5 class that does not have any additional LSA support and this presently contains 32 children. In addition the School has a specialist unit which accommodates children with moderate/severe learning difficulties.
5. The Teacher told the Tribunal that next year the School proposes not to have any booster classes and it is planned that there will be two separate Year 5 and Year 6 classes. As such the Child will be in one of two straight Year 6 mainstream mixed ability classes from September 2011. The LSA support that is funded by the School will be split between the 4 Year 5 and Year 6 classes.
6. Both parties agree that the Child should be taught in a mainstream class with cognitively able peers rather than in a special needs class and that this should be included in the Child's Statement. This is based upon comments made by the Tribunal Panel which considered the Parents appeal against the Local Authority's refusal to issue a Statement and upon the recommendation of the Educational Psychologist in their report in May 2011. The parties disagree over whether the booster class, in which the Child is presently placed, is appropriate for the Child in light of these comments. In view of the fact that the principle is agreed between the parties and this provision will be written into the Child's Statement and in view of the fact that the School does not propose to have booster classes next year the Parents' Representative did not make any representations to the Tribunal concerning the Child's current class placement.

7. The Teacher told the Tribunal that the Child is a good pupil who always gives their best. They said that the Child is very well behaved and is a popular member of class. The Teacher said the Child has made several good friends. The Teacher said that in their view the Child is not especially timid and is able to ask for help when the Child needs it. The Teacher said that in school the Child does not present as having issues related to their self esteem. The Teacher also said that they consider that the Child is making progress. The Teacher described how the Child has recently progressed from Level 11 to Level 12 in the Oxford Reading Tree series of reading books. The Teachers statement in March 2011 indicates that in September 2010 the Child was tested in spelling and obtained an age equivalent score of 7 years 9 months, the Child was subsequently tested in January 2011 and secured a test result equivalent to 7 years and 9 months and then again in March 2011 when the Child secured a test result of 9 years and 4 months. In regard to independent written work the statement indicates that in September 2010 the Child secured a National Curriculum Level 2a and by March 2011 an assessment of a piece of the Child's written work secured a National Curriculum Level 3c.
8. The Teacher outlined the additional support that the Child is receiving in school in order to address specific learning difficulties. The details are set out in the Teachers statement in March 2010. In addition to this provision the Teacher explained that the School is planning on introducing a programme to support the Child's difficulties with short term memory. In all numeracy sessions the Teacher said that either themselves or an LSA sit with the Child to support the Child's understanding and learning. The Teacher said that the two weekly sessions with the specialist SPLD teacher, continue and the Teacher explained that themselves and the SPLD teacher regularly liaise informally to discuss the Child.
9. The Parents said that they were pleased that the Child presents as a model pupil whilst in school and they acknowledged that the Child has been able to make some good friends at school, although the Child still finds mixing with other children quite hard. The Parents said the Child's two closest friends are presently in their class and that the Child relies particularly on the support of one of these friends. They said that they had not been aware of the plan to introduce a programme to work on the Child's short term memory and they did not know that the Child was receiving support during numeracy sessions.
10. The Parents told the Tribunal that at home the Child continues to express frustration and upset concerning the Child's difficulties with literacy and numeracy. They said that in their view the Child's specific learning difficulties are having an impact on their self esteem. The Parents do not share the Teachers view that the Child is making good progress in school. The Educational Psychologist told the Tribunal that the latest testing suggested that the Child has made some progress in some respects but that overall in their view they considered that the Child is not making the progress that they should be making. The Child's latest test results are set out in the report of May 2011. In the view of the Parents the Child requires additional support particularly to address the Child's numeracy difficulties and additional LSA

provision of 16 hours in total to support the Child in class and to help deliver relevant programmes, as recommended by the Educational Psychologist.

11. The Child was assessed by the Educational Psychologist in April and during that assessment they sought the Child's views regarding school. These views are set out in the report, dated May 2011. In essence the Child is reported as saying that they are much happier at their current school compared with their old school. The Child told the Educational Psychologist that they like certain subjects but gets frustrated with their reading and spelling difficulties and the Child feels they struggle with Maths. The Child said they feel they can now understand what they are being asked to do and feels like they can ask for help. Outside school the Child is reported to be a keen swimmer and is also very good at bowls.
12. The parties were able to agree the majority of the issues that were in dispute in respect of both Part 2 and Part 3 of the Child's Statement. In view of this it was not necessary for the Tribunal to make any specific findings in response to the evidence it heard concerning the Child's progress in school or regarding the provision that was necessary to address the Child's special educational needs.
13. The one outstanding area of dispute between the parties related to the wording that should be used to describe the concerns that the Parents have in respect of the Child's self esteem and well being. The Parents asked the Tribunal to include a statement that the Child's specific learning difficulties and numeracy difficulties "have" an impact on the Child's self esteem and emotional well being, in place of the current wording of the Statement which states that these difficulties "may" have such an impact. The Parents argue that the frustration that the Child expresses to them at home concerning their specific learning difficulties demonstrates that these difficulties are impacting on the Child's self esteem and emotional well being. The Local Authority argues that, because the Child does not demonstrate difficulties related to self esteem and emotional well being in school, the current wording should remain the same or that, in the alternative, it should be changed to record the Parents view and that of the School.

Tribunal Conclusions 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 supporting Regulations and relevant provisions of the Special Educational Needs Code of Practice for Wales.

- A. The parties were able to agree the majority of the areas of dispute in respect of Part 2 and Part 3 of the Child's Statement during the course of the hearing. A copy of the Statement setting out the agreed changes is attached to this Decision and is marked Appendix A.

- B. In respect of the agreed amendments to Part 2 and 3 of the Child's Statement the Tribunal decided to endorse the proposals of the parties. The Tribunal considered that the agreements reached were sensible in the circumstances and appeared to be in the Child's interests in the context of their placement at School A.
- C. In relation to the outstanding dispute concerning the wording to be included within Part 2 of the Statement in respect of the emotional impact of the Child's special educational needs the Tribunal carefully considered the arguments of both parties. The Tribunal concluded that it was appropriate for the Child's Statement to refer to the Parents firmly held belief that the Child's special educational needs have an impact on the Child's self esteem and emotional well being. Their view is based upon their experience of how the Child presents outside school and upon the views the Child has expressed to them concerning their special educational needs. The Tribunal considered that it would be helpful for staff to be aware of this view when they are working with the Child so that they can tailor their support accordingly and so that they can maximise opportunities to bolster the Child's self esteem whilst in school. The Tribunal felt that this approach accords with the agreed description of the Child in later paragraphs of Part 2 where the Parents experiences of the Child are recorded and with points (v) – (viii) of the objectives in Part 3 of the Child's Statement and points (vi) – (x) of the provision.
- D. However, the Tribunal considered that the evidence from the Teacher relating to the Child's positive presentation in school could not be disregarded. The Tribunal was impressed by the quality of the evidence given by the Teacher. The Teacher is with twelve years experience of teaching pupils at Key Stage 2 and whilst the Teacher has not received any additional formal training in respect of specific learning difficulties in the view of the Tribunal the Teacher was able to demonstrate a good understanding of the Child's needs and difficulties. The Tribunal was impressed with the evidence given concerning how the classroom practice supports the Child and works in conjunction with the additional support the Child receives from the Local Authority Specific Learning Difficulties Team. That the Child presents as a good pupil with a very positive outlook in school, notwithstanding the Child's specific learning difficulties, is very much to the Child's credit and to the credit of their very supportive parents and reflects on the positive teaching practice that the Child appears to be benefiting from presently. The Code of Practice at paragraph 8:32 makes it clear that Part 2 of a Statement should describe all of a child's learning difficulties and it should also include a description of a child's current functioning. The Tribunal considered therefore that it was important that the Child's Statement reflects their functioning in school in addition to reflecting the experience of the Parents.
- E. The Tribunal felt that to include the wording sought by the Parents, without making it clear that this is their experience of the Child, would not accurately describe the overall picture of the Child's current functioning as reflected in the evidence given by the Teacher. The Tribunal therefore decided that the

Child's Statement should include the wording set out at paragraph (ii) of the Order below.

- F. The Tribunal took the view that it was not necessary to include the additional wording," School A report that this is not evident in the school setting." The reason for this is that later agreed sections in Part 2, such as the reference to the Child enjoying school when the Child is there appear to address the point.
- G. The Tribunal was aware that the relationships between the parties have become strained. As explained at the hearing it is not the function of the Tribunal to arbitrate on the reasons for this. The Tribunal wished to comment however on the willingness and ability of both sides to set aside their differences during the course of the hearing in order to work together to resolve a number of the outstanding issues. The Tribunal hopes that now that these proceedings have been concluded and the Child's Statement makes provision for a significant degree of additional support in the context of their current school placement the parties can begin to re-establish effective lines of communication.

Order

- I. By agreement of the parties the Local Authority is to amend Part 2 and Part 3 of the Child's Statement in accordance with the agreed proposed amended Statement at Appendix A.
- II. In relation to the additional amendment in respect of the Child's self esteem and emotional well being in Part 2 of the Statement the Tribunal orders that the Local Authority make the following amendment :-

"The Parents believe that these difficulties together with difficulties identified in numeracy have had an impact on the Child's self esteem and emotional well being."

Dated June 2011