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Decision

Date of Birth:	2001	
Appeal of:	The Guardian	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of hearing:	2010	
Persons Present:	The Guardian	<i>Guardian</i>
	Guardian Representative	<i>Solicitor</i>
	Guardian Witness	<i>Educational Psychologist</i>
	LA Representative	
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>Head Teacher</i>

Appeal

The Parent appeals under Section 326 of the Education Act 1996 against the contents of a Statement of Educational Needs (the Statement) written by the Local Authority in respect of their Child.

Preliminary Issues

1. An application was made to admit late evidence, being reports and also a letter concerning ataxia, dated September 2010. No objection was taken to the admission of these documents into evidence. They had all been served and filed more than 5 working days prior to the Tribunal Hearing and did not impede the efficient conduct of the hearing. They were not available at the case statement date, being recent reports. The Reports were the only evidence we had relating to occupational therapy and speech and language therapy. We admitted the reports under Regulation 33 of The Special Educational Needs Tribunal Regulations 2001.

Facts

- A) The Child was born in July 2001, and is currently 9 years of age. The Child lives with their Guardian and Great Aunt and one sibling. This has been the family unit since 2005.
- B) The Child has congenital nystagmus (an eye condition) and has other difficulties relating to literacy skills, coordination and balance, and the Child's speech and language. The Child has a Statement dated April 2010 and the Child's Guardian appealed against the contents at part 2 and 3 of that Statement.

- C) The Child attends School A, and presently has 10 hours per week support from a Learning Support Assistant. The Child is placed in a small class numbering 17, all of who are on the Special Needs Register and 4 of who have statements of Special Educational Needs. The School SENCO teaches this class with the assistance of one Learning Support Assistant. It is a mixed class of years 4, 5 and 6, and therefore contains children of differing ages and differing abilities. The Child has been placed in this class since Year 4, and is now in Year 5. It is planned that the Child will remain in the class next year.

Tribunal findings with Reasons

- A. In arriving at our decision we have considered all of the evidence we have heard and read the Education Act 1996 and the Special Educational Needs Code of Practice for Wales.
- B. The parties produced a working document, which was further discussed between their representatives during the course of the day. They were able to resolve a number of the issues in this case, and we are most grateful to them for their assistance, which narrowed the issues considerably.

Amount of Support

- C. It was agreed between the parties that the Child required some dedicated one to one support from a Learning Support Assistant. They could not agree, however, as to the number of hours of support the Child required. The Local Authority agreed to a total of 13 hours and 10 minutes support, including the time that the Learning Support Assistant would need to be working on speech and language and occupational therapy programmes each week with the Child. On behalf of the Appellant, it was contended that the Child required 20 hours of support, being support throughout all curricular based areas. The basis of this was that the Child required assistance to understand the instructions given to them, and to keep the Child on task to complete their work.
- D. The Head Teacher of School A accepted that in some lessons the Child required help with understanding the instructions given to them and help to stay on task. The Head Teacher was unable to explain why they needed such help in some lessons, but not in others. It was apparent from the evidence, and we find, that there was minimal differentiation of the curriculum in the Child's class with the current levels of support.
- E. We accept that teaching 17 children, all of whom are on the Special Educational Needs Register, and 4 of whom have statements of Special Educational Needs, and over 3 different year groups, is a challenging task.
- F. We also note that part of the Learning Support Assistant provision was in place to assist the Child with appropriate materials to assist their visual difficulties.

G. We have concluded that in order to ensure the Child understands the instructions given to them, and stays on task during lessons, and in order to assist the Child appropriately with the differentiation of the curriculum by producing appropriate resources, and also to assist in the setting of appropriate SMART targets, and in the measurement of progress against those targets, further learning support assistance also needs to be available from an individual trained and experienced in supporting children with difficulties like the Child's. Daily implementation of a dedicated SALT programme designed by a speech therapist will also require further 1:1 support from an LSA in order to develop the Child's recognized expressive and receptive speech and language difficulties.

H. We note the conclusions in a report dated October 2010. At page 19, paragraph 11.2, the Educational Psychologist states:

“Even though there are only 17 pupils in the Child’s class the Child must in addition receive full time dedicated one to one support from the Teaching Assistants...the Child also requires one to one support to assist the Child’s poor motor coordination, receptive and expressive language difficulties, verbal comprehension difficulties, concentration, processing speed skills and memory weakness. With the support from a Teaching Assistant, the strategies taught by the Class Teacher can then be embedded and reinforced across all of the Child’s lessons.”

I. At page 22, at paragraph 11.13 the Educational Psychologist states as follows:-

“It is my opinion that the Child can only make progress at School A if these recommendations are put in place that the Child receives a full time Teaching Assistant and the teaching staff are supported by appropriate professionals from the Local Education Authority and Health Authority.”

J. Although we accept that the Child has made some progress with their reading age, the Child remains approximately 2 years behind their peers in terms of chronological age. If the Child is not able to fully understand all the instructions given to them, and to be supported in the ways that the Educational Psychologist sets out, we find that the Child will not make the progress that they should, and that therefore the Child requires a greater level of dedicated one to one support than is at present available.

K. There was a further issue between the parties as to whether the Learning Support Assistants should support the Child during PE and Games lessons. In relation to PE, the Local Authority evidence was that access to a Learning Support Assistant was not required because the activities were conducted on the floor only, without the use of apparatus. The Child is also able to dress and undress them self, and therefore does not require assistance with this. It was agreed that the Child should have access to a Learning Support Assistant during Games. In relation to this issue, we accept the evidence of the Local Authority and find that the Child does not require access to a

Learning Support Assistant during PE lessons. This is not necessary in order for the Child to safely take part in these lessons, and we also take note of the concern that if the Child has a Learning Support Assistant with them the whole time, this may delay the Child's acquisition of independent skills.

- L. We have concluded that the Child requires 20 hours of Learning Support Assistance per week, which is to allow the Learning Support Assistant to assist the Child in understanding the instructions given to them, support the Child during lessons, keep on task, prepare materials, and be available to the Child during games lessons. The Learning Support Assistant will also within this time complete the speech and language and occupational therapy programmes with the Child each week. We are of the view, having considered all of the evidence, that the Child requires this degree of support currently in order for the Child to make adequate progress, and hopefully catch up some of the delay that the Child currently experiences.

We were pleased to note during the hearing that the Local Authority agreed that an advisory teacher would advise and monitor the Child's learning, and that the Learning Support Assistant working with the Child should be trained and experienced in working with children with the Child's type of difficulties. These have been added to the Statement by agreement.

- M. There was a difference between the parties as to how the Child's learning difficulties should be properly described - as "significant" or "specific". It seems to us that there can be no doubt that the Child's learning difficulties are significant, in the sense that the difficulties are affecting the Child's ability to make progress. To the Child, therefore, they are clearly of significance. Whether they are specific relates to whether the Child's difficulties are of a more general nature, given that the Child has occupational therapy, visual, and speech and language difficulties in addition to literacy problems. For the moment, we think it inappropriate to apply the word specific. The Child is still quite young, and it was plainly difficult for the experts to ascertain the contribution towards the Child's overall difficulties from each of the areas of difficulty the Child experiences. Appropriate experts have only just considered speech and language and occupational difficulties. We also note the Occupational Therapist's concern that there needs to be confirmation as to whether or not the Child has ataxia, or whether there is something else contributing to the Child's difficulties. In the circumstances, we find that the evidence is too uncertain to come to a conclusion that the Child has specific learning difficulties, and will use the word significant only to describe those difficulties in the Statement.

Dyslexia

- N. The main evidence in support of the Child being diagnosable as dyslexic comes from the Educational Psychologist. The most recent report, dated October 2010, sets out the British Psychological Society definition of dyslexia, but in the summary section at paragraph 9.1 on page 17 does not indicate that the Child has difficulties which accord with this definition. In the

circumstances, the Guardians Representative, did not pursue the insertion of the word dyslexia into the Statement with any vigour, and we find that it should not be included upon the evidence that we have seen and heard.

- O. There was also an issue between the parties as to whether percentile scores ought to be contained within the statement. This in part, related to a difference in a view between the Educational Psychologists that gave evidence before us. A variation of scores has been recorded following testing of the Child, and there was a difference in view as to the Child's level of cognitive functioning. We do not think it appropriate to include percentile scores as these will be contained in the reports that are to be annexed to the statement. Given the present low level of the Child's reading ability, (7 years) we are also of the view that further testing in future years may well more accurately reveal the Child's level of cognitive functioning. The Child has to cope at present with a number of difficulties which are likely to have impinged upon any accurate evaluation of their cognitive abilities, and we note that the Educational Psychologist does not provide an overall intelligence quotient figure for the Child in our view, wholly appropriately. We have therefore decided to incorporate into the statement only fairly general wording as to the Child's current abilities, and we hope that as the Child develops further, and learns better how to manage their difficulties, the position will become clearer than it is at present.

Conclusion

- P. We have concluded that the Child's Statement does require amendment, even over and above those matters agreed at the Tribunal Hearing. It is our view that the Child requires 20 hours of learning support assistance per week which is to allow that assistant to support the Child in lessons, prepare materials, be available to the Child during games lessons, and complete the speech and language and occupational therapy programmes of work. In class, this will enable the Child to have help in understanding the instructions given to them and to help the Child to stay on task and complete work.
- Q. Accordingly, the Statement of Special Educational Needs in the case of the Child is amended in accordance with the draft annexed hereto.

Order

The Appeal succeeds, and the Statement of Special Educational Needs in respect of the Child is amended in accordance with the version annexed hereto.

Dated November 2010