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Decision

Date of Birth:	1997	
Appeal of:	The Parents	
Type of Appeal:	Part 3 of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2010	
People present:	The Parents	<i>Parents</i>
	LA Representative	<i>Representative</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>SENCo</i>

Appeal

The Parents appeal under section 326 of the Education Act 1996 against the contents of part 3 of a statement of special educational needs made by Local Authority for their Child.

Preliminary Issues

The attendance form provided by the Parents indicates that the Parents were to be represented by a representative from SNAP Cymru. In the event that the SNAP Cymru advisor did not attend, and the Parents were unrepresented at the hearing, the Parents were informed a week before the hearing that the SNAP advisor was not able to attend. They were given the opportunity to apply for an adjournment but they decided not to do as they preferred to go ahead with the appeal.

The LA had submitted additional documentation which they sought to admit as late evidence under regulation 33(2), these documents being:

- i. Annual review documentation (June 2010)
- ii. Report by an occupational therapist (September 2010)
- iii. Report by the advisory teacher (September 2010)
- iv. Proposed timetable for the Child
- v. Details of qualifications and experience of current SLD staff

These documents had been served upon the Parents and the Tribunal Secretariat more than five days before the hearing and accordingly satisfied the criteria for admission. The Parents did not object to the admission of this additional documentation. The application was accordingly allowed.

Facts

- I. The Child was born in August 1997 and is now thirteen years and one month of age. The appellants are the Child's Parents.
- II. The Child has numerous additional needs which are summarised as follows:
 - i. Chromosome abnormality – 7Q deletion
 - ii. Neuropathic bladder requiring catheterisation
 - iii. Faecal incontinence
 - iv. Visual difficulties
 - v. Behaviour problems
 - vi. Developmental delay
 - vii. Developmental co-ordination disorder
 - viii. Severe learning difficulties
- III. Having attended at an Assessment Centre between the ages of three and six, the Child subsequently attended School A. The Child has had the benefit of a statement of special educational needs since the age of six and was supported throughout the school day by a nursery nurse.
- IV. To assist the Child's transition to secondary school the nursery nurse moved with the Child to the secondary school in September 2009. This nursery nurse continues to support the Child on a full time basis pending the decision of this tribunal.
- V. The Child is now a year 8 pupil at School B. The Child spends some part of the day in the Resource Base but the Child is integrated into the mainstream for the majority of lessons.
- VI. The Parents requested a statutory reassessment of the Child's special educational needs to which the LA agreed in October 2009. This assessment was completed in January 2010 and led to the issue of a final amended statement in March 2010.
- VII. The Parents now appeal against part 3 of that statement.

Tribunal's Decision with Reasons

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:

1. The tribunal is requested by the Parents to adjudicate upon a single issue in their appeal against part 3 of the statement issued in March 2010. Both

parties acknowledge that the Child requires adult support at all times. The statement under appeal provides that the Child “will access LSA support at levels 1 to 3 both for learning activities within the base and when attending mainstream”. The Parents argue that the Child should be supported by a level 3 teaching assistant at all times. They do not seek a continuation of the present arrangement whereby the nursery nurse who accompanied the Child from primary school continues to support the Child on a permanent basis.

2. The nursery nurse who supports the Child also acts as the Child's respite carer from time to time. This arrangement was intended as a temporary measure to assist with the Child's transition to Secondary school and until a teaching assistant was appointed in School B. It transpires the LA has not yet made an appointment with the result that the nursery nurse continues as the Child's full time support. During the Child's first year at secondary school the nursery nurse worked four days a week. Although the Parents were required to attend school to attend to the Child's medical needs the Child was supported by other members of staff on the day when the nursery nurse was not working. The tribunal was told that the nursery nurse has qualifications equivalent to those of a level three teaching assistant. The Nursery nurse has clearly made a valuable contribution in ensuring that the Child's transition to secondary education appears to have been a seamless experience. The Parents confirmed that it is not their case that the nursery nurse should continue in this role.
3. The specialist resource base was established in September 2008 within School B. It has the equivalent of 56 full time pupils on roll and caters for children with a range of special educational needs. The base has two classes for pupils with severe learning difficulties and the Child is a pupil in one of these classes.
4. There are currently eleven pupils in the Child's class, six of whom are in year 8. The staffing model employed by the LA provides a specialist core group of staff for each class who will accompany the pupils into the mainstream classes. All the pupils in the Child's class access mainstream education. The staff in the Child's class comprises of a specialist teacher, three level 2 teaching assistants, three level 1 teaching assistants and also the nursery nurse who supports the Child. The LA stated that the staffing model also provides that each class should have one level 3 teaching assistant. Accordingly when the nursery nurse withdraws as the Child's support they will be replaced by a level 3 teaching assistant who will then be available to support all the pupils in the class.
5. The LA's case therefore is that the Child should be supported at different times by any member of the staff in the class.
6. The LA produced as late evidence a proposed timetable for the Child during this academic year. The Parents stressed that they were anxious for the Child to be integrated into the mainstream for as much as possible of the school day to enable the Child to interact with their peers. On the

basis of this proposed two week timetable the Child will spend 72% of their time in the mainstream in one week and 76% of their time during the second week. The Child will spend the remainder of the time within the resource base. The Parents are content with this apportionment of the Child's time.

7. The proposed timetable also indicates the level of the teaching assistant support that will accompany the Child during each lesson. The proposed timetable shows that the Child will be supported for thirteen lessons out of twenty five each week by a level 3 teaching assistant. The LA explained that the rationale for the deployment of support in this manner is to provide a level 3 teaching assistant to support the Child during lessons when there is a substantial curricular content. For instance therefore, it was envisaged that during a physical education lesson the Child should be supported by a level 1 teaching assistant. The Parents contend that a level 3 teaching assistant is required for physical education because of the potential dangers for the Child. However consideration of the specimen job description contained in the bundle for teaching assistant at levels 1, 2 and 3 shows that "the supervision and support of pupils ensuring their safety and access to learning" is a necessary requirement for a level 1 teaching assistant. As such a level 1 teaching assistant will have the necessary skills to support the Child in a subject such as physical education. The tribunal accepts the argument of the LA that a level 1 or 2 teaching assistant is suitably qualified to support the Child during some lessons, whilst a level 3 teaching assistant will be required for those subjects areas that require greater curricular differentiation.
8. The Parents concern was that the LA is reducing the level of support for the Child at a time when they believe that the Child's needs are greater. The Parents were greatly disturbed when they saw a job advertisement for a level 2 teaching assistant whom they believed would be engaged to support the Child. The LA assured the tribunal that this is not now the case and the LA Representative confirmed that the LA will be appointing a level 3 teaching assistant in order to complete the team supporting the Child's class.
9. The Parent's case is that the Child's teaching assistant throughout the school day as is presently the case. The tribunal does not believe that this is the correct approach for the reasons set out below.
10. A significant and worrying issue for the Parents upon transfer was that members of staff should be able to assist the Child with their catheterisation, which is required every four hours. When the Child transferred to School B it was only the nursery nurse who accompanied the Child who was trained to perform the task. The Parents were also attending school to perform the catheterisation on the day when the nursery nurse was not working. The Parents recounted an occasion when the Child was left without assistance causing the Child distress and medical complications. However the LA confirmed that two or three persons have now been trained to help with catheterisation. The Parents

declared that they are satisfied with the arrangements that are now in place. However it is extremely important that at least two or three members of staff at all times are trained and able to provide adequate cover as and when the need arises. The tribunal considers it important that this arrangement is recorded in the statement to reinforce the medical care plan. This aspect does not therefore require the attention of a level three teaching assistant.

11. The Parents stated that they are happy with the school and the tribunal is also impressed by the way in which the Child has been successfully integrated into the mainstream. The tribunal is satisfied that the LA recognises the Child's needs and concludes that the LA has put together a package of support that meets the Child's needs. The LA also emphasised during its evidence that it is prepared to be flexible in the manner in which the support is provided for the Child.
12. Given the overriding wish of the Parents that the Child is integrated with their peers the tribunal considers that it is extremely important that the Child does not become over dependant upon one individual so as to give greater opportunity for the development of life and social skills. There is no evidence to suggest that the Child will not cope with the change in personnel.
13. The tribunal is satisfied that the broad range of support that is available to the Child within the current staffing levels is adequate to meet the Child's needs. The LA indicated in evidence that it was committed to ensuring that there is at least one level 3 teaching assistant in each class, and once the nursery nurse withdraws from supporting the Child, a level 3 teaching assistant will be recruited. The tribunal is satisfied that this staffing model is appropriate to meet the Child's needs and that the Child can be supported by a level 3 teaching assistant in those classes where there is a greater curricular content. The LA confirmed, as set out in the proposed timetable that the Child will be supported by a level 3 teaching assistant for just over half their lessons. The tribunal is content to write into the statement that the Child will be supported by a level 3 teaching assistant for a minimum of thirteen out of twenty five lessons a week as is envisaged in the proposed timetable produced by the local authority.
14. The Parents seek reassurance that the Child will be adequately supported during the school day. The Parents were concerned about the use of the phrase that the Child "will also access" teaching assistant support as the Parents considered this to be a vague description without any degree of certainty. The tribunal is content to amend the wording in the statement to provide greater clarity and reassurance to the Parents. The amended wording will then reflect the reality of the situation.
15. The tribunal further concludes that the model of support proposed by the LA is an appropriate model that will meet the Child's needs and that this staffing model is the right way forward in the Child's case which allows the

Child to continue their successful integration into the mainstream and to develop the Child's continuing interaction with peers.

16. One matter that arose during the hearing was that the Child's work appeared to be differentiated by the teaching assistants. This is referred to in two documents. It was accepted on behalf of the LA that this should not be the case as differentiation of the curriculum is undertaken by the subject teachers. The tribunal proposes making a consequential amendment to Part 3 in order to clarify this aspect.
17. Continuing liaison with the Child's Parents and their full engagement in the planning of the IEP is essential. In order to stress this aspect some amendments have been made to the section dealing with monitoring.
18. The appeal therefore succeeds to the extent that part 3 of the statement will be amended to reflect the above findings; although for the reasons set out above the tribunal does not consider it appropriate for the Child to continue to be supported by the same individual throughout the school day.

Order:

Appeal allowed in part.

Part 3 of the statement amendments were attached to the original decision.

Dated September 2010