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Decision

Date of Birth:	2001	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against the Decision of:	The Local Authority	
Date of Hearing:	2011	
Persons Present:	The Parents	<i>Parents</i>
	Parents Representative	<i>Solicitor</i>
	Parent Witness	<i>Educational Psychologist</i>
	Parent Witness	<i>SALT</i>
	Parent Observer	<i>Parents Support</i>
	LA Representative	<i>Solicitor</i>
	LA Witness	<i>Teacher at Specialist unit</i>
	LA Witness	<i>SALT</i>
	LA Observer	<i>Observer</i>
	LA Observer	<i>Observer</i>
	Tribunal Member	<i>Observer</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 August 2010. The appeal is against Parts 2 and 3 of the Statement.

Preliminary issues and attendance

The Parents applied to admit an additional speech and language therapy report, from their Witness as late evidence. The Speech and Language Therapist conducted a further assessment of the Child in January 2011. The report is dated January 2011 and it was submitted to the Tribunal and served upon the Local Authority in January 2011. Having heard representations from the parties the Tribunal decided to admit the report as it was satisfied that the conditions set out in Regulation 33 (2) of the Special Educational Needs Tribunal Regulations 2001 were met.

The Local Authority applied to admit a copy of a speech and language therapy document and a series of IEPs relating to the Child. The speech and language document is a written summary of the work that has been carried out in school with the Child from September 2010 to the end of January 2011. The IEPs cover the Spring Term 2009 through to the current Spring Term of 2011. The documents were made available to the Tribunal and to the Parents on the morning of the hearing. The Solicitor, representing the Parents, objected to the admission of the documents as they could have been submitted in advance of the hearing. The Tribunal decided to refuse permission to admit the documents. The Tribunal decided that the conditions set out in Regulation 33 (3) of the

Special Educational Needs Tribunal Regulations 2001 were not met. The Tribunal was of the view that there were no exceptional circumstances to justify the admission of the documents; and it did not consider that the Child's interests would in any way be prejudiced if the documents were not admitted. In the view of the Tribunal, the NHS Speech and Language Therapist from the Teaching Health Board, and the Teacher in Charge of the Specialist Unit at School A, were present at the hearing and could provide the Tribunal with any relevant information concerning these matters. The Tribunal felt that all of the documents could have been submitted in advance of the hearing and indeed the Tribunal could see no reason why they would not have been available to the Local Authority so as to be submitted with the Local Authority's Case Statement in November 2010.

The Local Authority also applied to admit a copy of a speech and language therapy report from the NHS Speech and Language Therapist from the Teaching Health Board. The report is dated December 2010. The report was submitted to the Tribunal in January 2011 but it had been sent to the Parents and to the Speech and Language Therapist prior to this. The Parents were made aware that the Local Authority would be seeking to admit the document as late evidence in January. The Parent's Representative did not object to the admission of the report and indicated that the Speech and Language Therapist had the opportunity to take the findings of the report into account when they had assessed the Child in January 2011. The Tribunal decided to admit the report. The Tribunal considered that the conditions set out in Regulation 33 (3) of the Special Educational Needs Tribunal Regulations 2001 were met. As the nature and degree of the Child's speech and language difficulties and the provision that is needed to address them is one of the central issues in this case, and given that the report was a first hand account of a recent assessment of the Child and that they were not present to give evidence at the hearing, and taking into account the fact that the report had been shared with the Parents and the Speech and Language Therapist well in advance, the Tribunal concluded that the circumstances were sufficiently exceptional to merit the admission of the report and it took the view that there would be a serious risk of prejudice to the interests of the Child if it was not admitted.

Two working documents were available to the Tribunal at the hearing. The first was submitted to the Tribunal by the Parent's Representative on behalf of the Parents in January 2011. It had also been served upon the Local Authority on the same day. There was no objection to this document being admitted into evidence. The second document was submitted to the Tribunal from the Local Authority in February 2011. This document built upon the working document submitted by the Parent's Representative and set out the Local Authority's position in respect of the amendments sought by the Parents. The Parent's Representative did not object to the admission of the second working document as in their view it served to narrow down the outstanding issues between the parties. In respect of the first working document, the Tribunal decided that the conditions set out in Regulation 33 (2) of the Special Educational Need Tribunal Regulations 2001 were met and therefore it accepted the document. In respect of the second working document, the Tribunal decided that the conditions set out in Regulation 33 (2) of the Special Educational Needs Tribunal Regulations

2001 were met and it therefore accepted this document also. Had this not been a reworking of the first working document the Tribunal would have been unlikely to have accepted its admission: but since this was not the case, and since both parties considered that its admission would contribute to the effective resolution of the issues in this case the Tribunal decided to admit it.

The Local Authority applied for permission to admit into the hearing the School Effectiveness Officer from the Local Authority, the Head Teacher of the Child's School, as observers. The purpose of their admission was to support discussion and negotiation between the parties through the course of the hearing and assist the Child's School and the Local Authority in understanding and then implementing the terms of any orders made by the Tribunal. The Parent's Representative did not object to the admission of either of them. The Tribunal gave very careful consideration to this unusual application. The Tribunal was mindful that hearings are to be conducted in private and it took into account the limitations that are usually placed upon the number of people attending hearings in the interests of justice. However, in the particular circumstances of this case, especially so as to assist and support in discussions and negotiations between the parties, the Tribunal felt that there were exceptional grounds to agree to the application. The Tribunal decided to admit the School Effectiveness Officer and the Head Teacher into the hearing under Regulation 30 (3) of the Special Educational Needs Tribunal Regulations 2001.

Facts

1. At the time of the hearing the Child was 9 years and 11 months old.
2. It is agreed that the Child has ADHD. The Child was diagnosed as having this condition initially by an Associate Specialist in Paediatrics at the Local Authority Teaching Health Board in 2007 and this diagnosis has been confirmed by a Consultant Paediatrician from the Local Authority Teaching Health Board. The Child takes medication to help manage this condition, once per day on school days. It is also agreed that the Child is dyslexic. This was identified in 2007 by a Local Authority Educational Psychologist and has been confirmed by two Educational Psychologists who have assessed the Child. These difficulties have caused the Child to exhibit behavioural difficulties, to have attention and concentration difficulties and poor listening skills. The Child also has severe working memory difficulties. As a result of the combination of the Child's difficulties, the Child's acquisition of literacy and numeracy skills has been delayed.
3. In regard to the Child's general cognitive abilities, the test results of the 3 Educational Psychologists who have assessed the Child and those from School A have demonstrated some variability. This is perhaps not surprising given that the Child has ADHD and suffers as a consequence from difficulties with attention, concentration and listening and given that the affects of ADHD on performance can often vary from day to day. At the hearing however the parties were in agreement that the Child is not a child with moderate learning difficulties as per the technical definition of

the term and it was acknowledged by all that the majority of the Child's test scores generally fell within the broad average range of ability. The Parents were particularly anxious to clarify this point so as to ensure teaching staff would have an accurate expectation in regard to the Child's performance.

4. In regard to the Child's language difficulties, the Speech and Language Therapist who assessed the Child in March 2010 and again in January 2011, has indicated that the Child has severe language impairment. In contrast to this a speech and language assessment carried out by a NHS Speech and Language Therapist, in 2007 seemed to suggest that the Child had delayed overall language skills, comparable with the then assessment of the Child as having a relatively low cognitive ability level. At that time it was the view therefore that the Child did not have a specific speech or language difficulty. After a further assessment of the Child's language difficulties carried out in December 2010, it would appear that it is now considered that the Child has specific areas of language difficulty, some of which are quite marked, although the Child also has some areas of language that fall within the average range of ability for their age. The Child also has some social communication difficulties that, following assessment, appear not to be related to autistic spectrum disorder.
5. The Child attends School A. The Child has been attending there since September 2008. The Child is presently in Year 5. The area is maintained by the Local Authority and the curriculum at the School is taught principally through the medium of English. Prior to September 2008 the Child had been attending School B where the curriculum is taught principally through the medium of Welsh.
6. School A has a small specialist unit for pupils with specific or moderate learning difficulties. The Child receives specialist support at the Unit and the Child is also placed in one of two Year 5 classes at the School. The Unit presently has 9 pupils in attendance, including the Child. The Year 5 Class has 21 pupils.
7. The Unit is staffed by the Specialist Teacher in charge of the Unit, and a Learning Support Assistant. The Specialist Teacher has been teaching for over 30 years and has been a SENCO for approximately 12 years. The Specialist Teacher has a Postgraduate Diploma in Specific Learning Difficulties and a Masters Degree in Special Educational Needs. The Learning Support Assistant has 25 years experience of working with children with special educational needs. The Child's mainstream class does not have a Learning Support Assistant specifically assigned to it due to its size.
8. The Child spends 4.5 mornings and 2 afternoons each week in the Specialist Unit working on the core subjects and on individual programmes relating to memory training, keyboard skills, speech and language, narrative therapy and social skills development. Teaching at the Unit is delivered 1:1, in pairs or in small groups depending on what is

being taught and the individual needs of each child. When the Child attends mainstream class for the foundation subjects, the Child is supported by another Learning Support Assistant. During 2 of the mainstream sessions the Learning Support Assistant also works with the Child for 10 minutes on memory training programme and for 10 minutes on speech and language programme. The Child has also very recently started to take part in French and Drama lessons with the mainstream class. The Child is supported in these subjects by one of the school's mainstream Learning Support Assistants. This is reported to be going very well.

9. The Specialist Teacher explained that pupils attending the Unit are very much part of their mainstream class. Pupils register and have Assembly with their mainstream class before coming to work in the Unit. They said that the Child gets on very well in both the Unit and in mainstream class. The Teacher said that the Child is very kind and is popular with pupils in the Unit and in mainstream class. The Teacher also said that the Child does not require support during break times or at lunch times any more, such has been the degree of improvement in the Child's behaviour since the Child started at the School.
10. It is agreed that the Child is well placed at School A. The Tribunal heard evidence from the Specialist Teacher concerning the considerable improvement that has occurred in the Child's behaviour and social interaction and in the Child's ability to pay attention, concentrate and listen since the Child started at the School.
11. The Specialist Teacher also told the Tribunal that the Child has begun to make academic progress. The Teacher explained that when the Child started at School A they had been working towards Level 1 of the National Curriculum Levels in most subjects and in most recent assessments, in January 2011, the Child had been able to achieve Level 2C in Oracy, Level 2C in Reading, Level 1A in Writing, Level 1B in Using and Applying Number, Level 2C in Shapes, Space and Measures, Level 1A in Data Handling, Level 1A in Science Enquiry, Level 2C in Life Science, and Level 1A in Science Physical Processes.
12. The Specialist Teacher went on to say that in terms of reading, spelling and numeracy, they felt that the Child was making good progress. The Teacher said that when the Child started at School A the Child had not developed the listening skills required to be able to learn. Once these had been mastered the Teacher explained that the Child then began to develop pre reading and writing skills and numeracy skills. The Teacher said that when the Child started at the School the Child was only able to recognise the word, "a" and could not write their name. The Teacher said that when the Child was tested at that time, at chronological age 7 years and 7 months using the Salford Reading Test, the Child had a reading age of 4 years and 11 months and, using the Schonell Spelling Test, the Child's spelling age was less than 5 years. The Specialist Teacher said that in the Child's recent reading and spelling tests, carried

out in January 2011, at chronological age 9 years and 10 months, the Child scored a reading age of 6 years and 6 months, using the Young's Reading Test, and at 6 years and 4 months for spelling, using the Single Word Spelling Test. The Teacher said that the Child's numeracy abilities were also around the same level. In terms of high frequency words, the Teacher said that the Child was, as at December 2010, able to read 114 words and spell 79. The Teacher said that the Child needs to put considerable effort into developing literacy and numeracy skills but with considerable repetition and with support and a lot of hard work the Child does eventually understand the Teacher was of the view that whilst the Child was not working on a par with mainstream peers, the Child had made considerable progress and that this was very much to the Child's credit.

13. The Parents, supported by the Speech and Language Therapist and Educational Psychologist, recognise that the Child has made progress in developing their literacy and numeracy skills but they still have significant concerns about the severity of the Child's language difficulties and poor working memory and about the slow pace of their progress. They take the view that the Child would benefit from additional direct support from a suitably qualified Speech and Language Therapist so as to address the Child's language difficulties and help maximise their academic progress.
14. Part 3 of the Child's Statement of August 2010 indicates the Speech and Language Therapy Service will liaise directly with the Child's school and that a Therapist will devise a speech and language therapy programme for the Child which the therapist will monitor on a half termly basis. The Statement envisages that a Learning Support Assistant will deliver this programme to the Child for 30 minutes each day. It appeared from the evidence given by the Head of Paediatric Speech and Language Therapy at the Local Authority Teaching Health Board that this provision was not yet properly in place. The NHS Speech and Language Therapy Service have now started to assess the Child and when this assessment is completed it is planned to provide the School with a programme for the Child. In the intervening period, the Specialist Teacher has been using the advice and recommendations from the SALT's first report to deliver their own speech and language programme for the Child. They said that last year this had been delivered during 2 x 20 minutes sessions each week and this year it was being delivered for 3 x 20 minutes each week in the Specialist Unit. On top of this, the Child is receiving 2 x 10 minutes sessions per week with a Learning Support Assistant during their time in mainstream class to work on the Child's memory skills and on their speech and language.
15. In addition, the Specialist Teacher explained that the Child had started to work on a social skills programme from when they had started at the School. In line with the Statement, the Specialist Teacher said that the Child is now participating in a small social communication group of 4 pupils for 45 minutes each week; also as part of this group the Child is now working on a narrative therapy programme that the Specialist

Teacher has been trained to deliver by the Speech and Language Therapy Service for 40 – 45 minutes each week.

16. The Specialist Teacher said that they did not have any specialist training in speech and language therapy. They worked closely with the Teaching Board NHS Speech and Language Therapy Service and as such had received training in the delivery of specific programmes for certain children, but said they had relied upon the Service for guidance and support as this was not their area of expertise. The Specialist Teacher said they would find guidance and support useful for the Child.
17. As a result of discussions and negotiations that took place on the day of the hearing the parties were able to agree all outstanding issues in respect of Parts 2 and 3 of the Child's Statement with the exception of provision for the Child relating to speech and language difficulties.
18. The Local Authority argued that the Child is making progress at School A and that the Child's language difficulties are such as to require only a speech and language therapy programme that is drawn up by a qualified therapist who will then monitor the programme. It was contended on behalf of the Authority that the Child was already receiving considerable support from the School and that an increase in provision would serve only to dilute this.
19. The Local Authority SALT said that it was difficult to see how it was possible to fit any additional provision into the Child's school schedule. The SALT said that the Speech and Language Therapy Service works closely with School A in respect of a number of children. As such, therapists regularly attend the School. The SALT said that the Service is well resourced and that it would be in a position to deliver direct therapy to the Child if this was what was considered necessary. The Salt had not worked with the Child themselves; the current assessment of the Child is being conducted by another Local Authority SALT.
20. The Parents, on the advice of the Speech and Language Therapist, consider that the Child needs direct speech and language therapy provision in addition to receiving a therapist directed speech and language therapy programme in school and in addition to attending the weekly social communication group. It is argued that the Child needs this level of provision because of the degree of the Child's language impairment and because of the lack of progress in addressing these difficulties, which in turn makes it more difficult for the Child to make progress with literacy and numeracy skills. The Parents argue that it is very important to try to maximise the Child's progress at this time in order to prepare the Child for their transfer to secondary school at the end of Year 6. The Speech and Language Therapist considers that the Child needs 2 x 30 minutes sessions of direct therapy each week delivered in their education setting. They said that one of the sessions could be delivered to the Child as part of a small group if pupils have similar needs to the Child. The Speech and Language Therapist accepted that the

Child already has a very busy schedule in school. They said that they were of the view that the direct therapist sessions could stand in place of 2 of the daily 30 minutes sessions of Learning Support Assistant time that should be spent delivering a speech and language therapy programme to the Child.

21. The Child's views relating to school are recorded in their contribution to a school report of July 2009 and in the pupil's view of progress dated September 2009. In the first document it says that the Child wants to be good at reading, and in the second document the Child says that they like their teachers and friends and that they like being in both classes. These views are similar to the views that the Child is reported to have expressed in October 2009, and also to the Educational Psychologist, when they met the Child in March 2010. The Parents told the Tribunal that the Child continues to enjoy being at School A. They told the Tribunal that the Child likes sports and is good at swimming. They said that the Child desperately wants to be able to read and write and be like other children.

Tribunal's conclusions with 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 reach agreement over outstanding issues in relation to Part 2 of the Child's Statement. The terms of the agreement are recorded in an amended Statement which is attached to this decision and is marked Appendix A. The Tribunal decided to endorse the agreement of the parties.
- B. The parties were able to reach agreement over outstanding issues in relation to Part 3 of the Child's Statement except in relation to the provision of speech and language therapy for the Child. The terms of the agreement are recorded in Appendix A. The Tribunal decided to endorse the agreement of the parties.
- C. In relation to speech and language therapy provision, the Tribunal decided that it was necessary for the Child to receive direct therapy provision from a Speech and Language Therapist, delivered 2 x per week for 30 minutes. The Tribunal endorsed the Speech and Language Therapist's suggestion that if there are pupils who have similar needs to the Child then it would be possible for one of the sessions to be delivered to the Child on a small group basis.
- D. In reaching this decision, the Tribunal accepted the evidence from the Speech and Language Therapist, that the Child does have some significant areas of language impairment. The Tribunal noted that the Child had not received any direct therapeutic input to date and it

concluded that such input was now required. Whilst the Tribunal accepted the evidence of the Specialist Teacher that the Child was making progress in all areas of their learning at School A, it was mindful of the argument of the Parents that it was in the Child's interests and necessary to seek to maximise that progress in preparation for the transfer to secondary school at the end of Year 6. The Tribunal considered that a period of direct input from a Speech and Language Therapist was likely to support this aim. The Tribunal was of the view that the progress that the Child makes should be monitored and the need for the direct provision to continue should be carefully considered at each Annual Review.

- E. Without seeking to be critical of either the School or Local Authority Teaching Health Board Speech and Language Therapy Service, it is unfortunate that the Speech and Language Therapy Service has not been fully and effectively engaged in supporting the Child's speech and language needs in school to date. The evidence seemed to suggest that the Service does have the capacity to support the Child if required to do so. The Tribunal anticipates that the Order it has decided to make in respect of speech and language therapy provision will assist the Local Authority in ensuring that the Child now receives the support that is, for the time being, required.
- F. In response to the concern that it would be difficult to fit speech and language therapy sessions into the Child's busy school week, the Tribunal noted and endorsed the suggestion of the Speech and Language Therapist that the sessions could replace two of the speech and language sessions that are being delivered to the Child by their Learning Support Assistant. In this way, the sessions of the Therapist would not be additional provision but a replacement for current provision. The Tribunal noted that paragraph 10 of the working document at Appendix A had been amended so as to facilitate this possibility. Further, given the considerable experience of the Specialist Teacher and given the on-going working relationship they have with the team the Tribunal felt confident in the ability of the Specialist Teacher to incorporate the direct speech and language therapy sessions into the Child's school week effectively.
- G. The Tribunal wished to express its gratitude to the Specialist Teacher for the detailed evidence they were able to give to the Tribunal concerning School A and the specific provision that the Child is receiving at the School. It is perhaps unfortunate that some of this information had not been provided to the Tribunal in advance through the Local Authority's Case Statement.
- H. The Tribunal very much agreed with the parties that the Child is very well placed at School A. The Tribunal was very impressed with the quality of the evidence given by the Specialist Teacher. The Teacher appeared to be very knowledgeable about the types of teaching strategies that work best for children with specific learning difficulties and/or moderate

learning difficulties and the teaching practice being delivered at the Unit seemed exemplary. It was clear to the Tribunal that the Specialist Teacher has a very good understanding of the Child's needs and that the staff at the school are able to deliver an extremely good individualised and flexible programme of education for the Child.

Order

- i. By agreement of the parties the Local Authority is to amend Part 2 of the Child's Statement in accordance with Appendix A.
- ii. By agreement of the parties the Local Authority is to amend Part 3 of the Child's Statement in accordance with Appendix A, save in respect of point 4 of the document relating to the provision of speech and language therapy.
- iii. In respect of the speech and language therapy provision to be stipulated in Part 3 of the Child's Statement, the Tribunal orders that the Local Authority should amend point 4 of Part 3 of the Statement to include the additional underlined wording set out in Appendix A.

Dated February 2011