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Decision

Date of Birth:	2004	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement	
Against Decision of:	The Local Authority	
Date of Hearing:	2011	
Persons present:	The Parent	<i>Parent</i>
	Parent Representative	<i>Education Adviser</i>
	Parent Witness	<i>Educational Psychologist</i>
	Parent Witness	<i>ABA Consultant</i>
	Parent Observer	<i>Observer</i>
	LA Representative	<i>Legal</i>
	LA Witness	<i>Educational Psychologist</i>
	AJTC Observer	<i>Observer</i>

Appeal

The Parent appeals 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

Both parties submitted late written evidence. The parent's Representative sent in two covering letters both dated March 2011, enclosing additional evidence and the LA sent a letter dated March 2011, enclosing a working document and a further report from the occupational therapy service. Both representatives confirmed at the hearing that the documentary evidence had been served from the Special Educational Needs and Disability Tribunal Procedure Regulations 2001(as amended).

At the start of the hearing, the Parent Representative made an application for an additional observer to be admitted on the parent's request. They sought permission for the Child's ABA tutor/shadow to be admitted to the hearing as an observer.

The Local Authority objected to the request on the basis that there were a large number of attendees at the hearing already and the room felt quite crowded.

The Tribunal considered the request and concluded that there was a clear imbalance in the number of people attending on behalf of the LA and as the parent was both legally represented and already had one observer to provide support, it was not in the interests of justice for a further observer to be admitted. The request was refused.

Facts

1. The Child is 6 years old and has a diagnosis of Autistic Spectrum Disorder (ASD). The Child has received 40 hours of ABA for 50 weeks a year delivered at home since 2007, with integration into nursery and subsequently in 2010, mainstream primary school provision. From about April 2010, the Child attended School A for up to 10 hours per week, and although initially settled well, after the summer holidays 2010 the placement broke down and since November 2010, the Child has been receiving a full time ABA programme at home. Since September 2010, the Child has been attending School B, an independent mainstream school, for two and a half hours on a Friday afternoon.
2. The LA amended the Child's statement in August 2010 with the intention that the Child should be integrated into mainstream provision as soon as possible with ABA support faded out quickly.
3. The Parent appealed against the amendments and sought to have the ABA provision continued to support the Child's integration into school and to continue for as long as is necessary to ensure that the Child is settled and happy in the school placement.
4. Negotiations continued between the parties throughout the period of the appeal and by the time of the hearing all of Part 2 of the statement had been agreed as had the placement in Part 4. All that remained for consideration by the Tribunal was the provision to be described in Part 3.
5. The Parent sought to have included in Part 3 of the statement frequent references to the provision of ABA programmes and the inclusion of the ABA methodology in all aspects of the Child's provision.
6. Although the LA agreed that there should be input by the ABA consultant on a half termly basis, and that the Child should be supported by their ABA tutor/shadow initially, they sought to describe the provision in a more flexible way, by omitting all references to the ABA methodology. They also sought to include within the various descriptions of the provision a reference to the Specialist Advisory Teacher on Autism.
7. The Parent sought to have included within the description of provision for the Child a specification for one hour a week of input by an occupational therapist and a further two hours per half term for observation and one hour per half term of occupational therapy time to update programmes and train members of school staff. In support of the request, the Parent relied on two privately commissioned reports by an occupational therapist, who assessed the Child in 2007 and again in 2010.
8. The LA opposed the request for such a high level of occupational therapy input on the basis that the input from the therapy service should be context specific to reflect the Child's very different responses in different

environments. A recent critique by head of the NHS occupational therapy services, identified issues arising from the evidence provided by the Occupational Therapist but confirmed that the provision would need to be tailored according to the Child's responses to their new school placement and did not, therefore, indicate a specific level of provision.

9. At the hearing the ABA consultant with responsibility for the Child's programme, confirmed the evidence contained in their written reports that the Child should start in School B on a full time basis as soon as possible supported by the Child's ABA tutor/shadow. The ABA consultant confirmed their proposed transition programme as set out in the Appendix to their report dated March 2011 and the intention to fade the support as soon as the Child's responses indicated that the Child was settled and happy in the new school. The intention is that the Child's ABA support will in time be replaced by the support on a one to one basis of a dedicated Learning Support Assistant/teaching assistant. The ABA Consultant confirmed in oral evidence that they did not disagree with the LA's proposal to include the involvement of the Specialist Teacher on Autism from the outset of the transition so that the handover to a teaching assistant and mainstream provision could be tailored with the agreement of all involved. They confirmed that their own input into the transition process would be a two hour observation visit to the school, followed by a one hour meeting with the class teacher, ABA tutor/shadow, Advisory Teacher for Autism and a workshop for the tutor and parent, every half term.
10. The LA Representative expressed their concern about the inclusion of ABA in every paragraph as suggesting that the provision would be delivered exclusively through ABA methodology and was anxious to ensure that there was provision within the statement to enable the Child to move on as soon as this was appropriate and for the ABA provision to fade.
11. The Parent expressed their own anxiety about the intentions of the LA to force the removal of the ABA provision too quickly, and was concerned that such a course of action would lead to the Child regressing and losing the skills and gains that they had made during the implementation of the ABA programme at home. The Parent attributed the Child's considerable progress to the ABA programme alone and wished to ensure that its support would continue for as long as it is necessary.
12. The Parent Representative relied on the reports by the Occupational Therapist and suggested that there should be a high level of occupational therapy provision made for the Child to make up for the deficits from the lack of provision by the LA to date.
13. The ABA Consultant's most recent review report confirmed that the Child had made significant and in some instances, greater than anticipated progress in the acquisition of skills over the last 12 months. In the February 2011 report, the ABA Consultant had identified a difficulty with the Child's over-reliance on the ABA tutor/shadow and had identified strategies to address this issue. It was reported as resolved in the March

report but a further difficulty of seeking excessive adult attention had been identified in that report. The ABA Consultant in their reports of January and March 2011 had indicated that it was the intention for the Child to join school on a full time basis, 5 days a week as soon as possible. At the hearing, it appeared to be agreed by all concerned that the aim is the Child's full time integration by May 2011 at the latest.

14. The Parent raised an issue during the hearing which was not part of the grounds of appeal surrounding the experience and job description of the adult who will replace the ABA tutor/shadow to support the Child in mainstream. The Parent sought to argue that a level of qualification and experience was necessary to support the Child making reference to the LA's own descriptions of posts within specific levels. The LA Representative confirmed that the job description of the teaching assistant/learning support assistant will be decided by the school when they advertise the post and that it will be necessary to consider that detail in the context of the Child's needs when the post is advertised.

Tribunal's Conclusions with Reasons

We considered the evidence presented both in the papers and orally at the hearing together with the provisions of the Code of Practice for Wales 2001. We concluded that:

- A. We are pleased that the parties continued to discuss the issues together right up to the date of the appeal and will include the agreed amendments as part of our order.
- B. We considered the amendments sought to Part 3 of the statement, over and above those which had already been agreed between the parties. We considered that the acrimony surrounding the description of the provision betrayed a lack of trust between the parent and the LA representative about the other's motives and proposals. There is inevitably an ideological conflict between the two parties in this case because of the vast difference between the methodology of delivery of a mainstream school curriculum and the very prescriptive and directive methodology of a pure ABA delivery, especially in the context of the new Foundation Curriculum in Wales.
- C. We have considered the representations made by both parties and we consider that the working document as currently drafted does not reflect the level of flexibility that will be necessary to cover all of the eventualities of the Child's development and progress over the coming year. The statement will be the subject of an Annual Review in twelve months' time (or sooner, if there were deemed to be significant problems at the new school placement leading to an early review), consequently the drafting of Part 3 need only reflect what may need to be delivered to meet the Child's needs over that period of time. We have concluded as a general principle that it must be drafted with sufficient flexibility to reflect the Child's potential progress towards the parties' joint aim to have the Child settled and

participating fully in mainstream provision as soon as possible, whilst providing him with the appropriate level of adult support and intervention at all times.

- D. To reflect the conclusion in C above, we consider that after including in the early paragraphs of Part 3, the general principle that the Child is to have support delivered by their ABA tutor using ABA principles and methodology immediately on the starting in School B, with continuing input from the ABA consultant on a half termly basis, it is necessary then in the following paragraphs to ensure that the potential for both ABA and mainstream methodology to be used as appropriate at any time to meet the Child's needs, without appearing to exclude either or to describe one methodology to the exclusion of the other. The provision must be thus described in order to enable the provision to be tailored specifically to the Child's needs and progress, the rate of which it is impossible to predict at present. If he continues to make progress at the same rate as they have done over the last 12 months then they may adapt very quickly to the provision at School B with the ABA provision being faded very quickly, possibly before the end of the next academic year. It may, however, take the whole academic year to fully fade the ABA support.
- E. We considered the recommendation for OT provision made by the Occupational Therapist in their report dated December 2010. We noted that they had observed the Child at both School A and School B but appeared to have made their recommendation for provision on the basis of the School A responses, without explaining the significant difference in presentation when the Child attended at School B and the meaning of this to the provision required. We noted that NHS Occupational Therapist in their report had identified the importance of the difference in presentation in different contexts and the implication from this that the Child can self regulate in certain circumstances. We were disappointed that the NHS Occupational Therapist had not been able to assess the Child's sensory integration difficulties in order to identify appropriate levels of provision and assume that his omission will be rectified as a matter of urgency once the Child is in attendance at School B.
- F. We considered the Occupational Therapists lack of clarity about the work to be done with the Child and the use that was to be made with the time allocated to the occupational therapy input, particularly when no reference was made to addressing the contextual issues, significant weaknesses which diluted the strength of the recommendations in the report. We noted that the NHS Occupational Therapist did not make any recommendation as to the level of provision and whilst the LA Representative conceded that the LA would concede that OT input should continue on a half termly basis, we concluded that the concession in Part 2 of the statement that the Child has a significant level of sensory integration difficulties there should be a more significant commitment to making appropriate provision for meeting the Child's needs in Part 3. We did not accept that the amount of time recommended by the Occupational Therapist was sustained or justified by their report, and we have therefore concluded that the provision

should be identified as being a commitment to at least one hour of input by the Occupational Therapist every half term. We concluded that we were significantly fettered by the inability to direct the NHS OT service to make a full assessment of the Child's sensory integration difficulties in his new school environment but we express our hope that such a course of action will be followed in order to inform the amount of provision required to address his needs in different contexts. Whilst the Child may not need the high level of provision identified by the Occupational Therapist, the description of the Child's difficulties in Part 2 indicate a need which must be addressed. We did not accept the Occupational Therapists evidence that an occupational therapist needs to be involved in developing the Child's social communication skills, and this role is clearly covered by the ABC Consultant within their programme.

- G. The issue of the qualifications and pay scales of the teaching assistant/learning support assistant was not raised as a ground of appeal and the tribunal was not supported by evidence to indicate the different bands or to support the submissions made by the Parent and Educational Psychologist on this point. In any event, we accept the submission by the LA Representative that the description of the job will be a matter for the school when the time comes to advertise for a TA/LSA and would not be appropriately included in Part 3 at this point.
- H. One issue which was not discussed at the hearing but which appeared in the working document as an issue was that the Child should not be included in setting their own IEP targets. We consider that this may have been a typographical error, but consider that the Child should be involved in the process, even if it is decided that it would be inappropriate for the Child to attend IEP review meetings.

Order

Appeal allowed.

It is ordered that the Local Authority do amend the statement of the Child as follows:

By replacing the existing with the following:

- i) In Part 2, by replacing the existing with the amended version agreed between the parties and attached to the decision.
- ii) In Part 3, by including the objectives set out in the amended version agreed between the parties and the provision set out in the Tribunal's final version of Part 3 attached to the decision.
- iii) In Part 4, by replacing the existing with the version set out in the Tribunal's final version attached to the decision.

Dated April 2011