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## **DECISION**

<b>Date of Birth:</b>	1998	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Against the contents of a statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of Hearing:</b>	2012	
<b>Persons Present:</b>	Parents	<i>Parent</i>
	The Parents	
	Representative	<i>NDCS Representative</i>
	Parent Witness	<i>Head Teacher</i>
	Parent Witness	<i>SALT</i>
	Local Authority	
	Representative	<i>Barrister</i>
	Local Authority	
	Witness	<i>Sensory Impairment Manager</i>
	Local Authority	
	Witness	<i>Teacher for Hearing Impaired</i>

### **Appeal**

1. The Parents appeal under Section 326 of the Education Act 1996 against the contents of a Statement of Educational Needs (the Statement) written by the Local Authority (the LA) in respect of the Child.

### **Facts**

2. The Child was born in December 1998. The child lives at home with the Parent 1. The Child has an older sister who has left home, and Parent 2 works away, but the family is together over some weekends. The Child attended School A from September 2010 to December 2011. The Child then transferred to School B a non-maintained specialist secondary school for deaf children, from January 2012. The Child boards at School B during the week, and comes home for most weekends and during the school holidays.
3. The Child has hearing loss in both ears to the extent that the Child is profoundly deaf and needs to wear hearing aids in both ears to achieve any functional hearing. The Child also relies upon lip-reading. The Child is of average cognitive ability.
4. The LA issued a Statement in respect of the Child dated September 2011. The Parents have appealed against that Statement as they disagree with some of parts 2 and 3, and also disagree as to the school named in part 4. The LA named School A in part 4, and it was their case that that school could adequately meet the Child's needs.

### **Preliminary Issues**

5. We were asked by both parties to admit late evidence. In the case of the

LA this comprised a reverberation report, documents about language levels, pre and post teaching information, individual education plan information, and language targets. In the case of the parents this comprised a school report from School B covering the January 2012 period. The parties consented to them being admitted into evidence. Accordingly we accepted them into evidence pursuant to Regulation 33(2) of the Special Educational Needs Tribunal Regulations 2001.

6. The Child had attended the hearing and wished to speak to us prior to the full hearing commencing. We saw the Child with the Parent and a representative from each party. The Child was able to clearly express her views and told us that they were happy at School B. The Child felt that she learnt more there because the Child understood the lessons, and felt more confident about asking for help when they needed it. The Child felt they were making friends in their year group, and did not feel "nervous" in School B, as the Child had in School A. The Child said they felt they had difficulties in making friends at School A, and that the social group the Child had attempted to be part of tended to talk fast so the Child could not follow the conversation and felt "invisible". Overall, the Child felt they knew what was going on at School B, whereas they felt out of things at School A.

### **Tribunal's Findings with Reasons**

7. In arriving at our decision we have taken into account Section 326 of the Education Act 1996, the Special Educational Needs Code of Practice for Wales and all of the evidence we have read and heard.
8. It was conceded by the LA that School B could meet the Child's needs.
9. It was also agreed by the parties that the primary issue we had to determine was whether or not School A could adequately meet the Child's needs, so as to be a suitable placement for the Child.
10. School A has a specialist hearing impaired unit. The school also has other specialist units to meet the needs of children who have other specific educational difficulties. The Child was the only child in their year group with the Child's degree of hearing impairment. For most of the school day children attend mainstream classes. Insofar as the Child was concerned, they were regularly in mainstream class settings, where they were the only child wearing hearing aids, and the only child to require the teacher to use an FM radio system to help the Child hear the teacher. Within the hearing impaired unit the Child would mix with other hearing-impaired young persons, and in particular with some young females who were 2 or 3 years older than the Child was. This raised some issues about the appropriateness of the discussions that were taking place. The result, however, was that the Child did not have a peer group of similarly hearing impaired young persons of their own age to whom they could relate and with whom the Child could socialize.
11. The Child has clearly expressed the view that they felt as though they were isolated at School A, and felt as though they were, in the Child's words, "the deaf kid". The Parent was of the view that having an appropriate peer group was the Child's main present need, and that the Child did not want to feel that they were isolated. The Parent felt that the Child would seek to be with other young people of similar age, and would be seen with them in school, outside

of lessons, but did not feel that the Child had become part of the group. The Parent thought that the Child was unable to develop meaningful friendships at School A, which had had a knock-on effect upon the Child's development of social language skills, and upon their self-esteem. We note that the Child was rejecting some of the assistance available to the Child in school, which appears to be linked with their desire not to be seen as different. The Child would reject close teacher assistant support, and did not wish to utilize the FM radio system. In relation to the latter a compromise was negotiated with the Child so they used the system in core subjects only, so long as the Child did not have to use it in other subjects. This would have caused the Child severe difficulties in terms of their ability to participate in the lessons in those non-core subjects, as the Child would not have been able to hear adequately. In our view this would have prevented the Child from accessing the curriculum adequately in these lessons.

12. In relation to the Child's feelings about the assistance that was offered to them, the head teacher of School B, gave evidence that in his view the Child would have needed maximum input around audiology and self-esteem issues, prior to being ready to take up the aids to the Child's hearing in a mainstream setting. We accept this evidence, which was effectively unchallenged.
13. We were provided with a great deal of paperwork in this case, and much of this had been generated by School A staff. We noted, with concern, the degree of negativity recorded in staff comments in the lesson records concerning the Child. Given that School A is the County resource for children with hearing impairment we found some of the comments to be lacking in sensitivity and/or appropriate awareness. We were also concerned that some basic steps, such as ensuring that videos/DVDs used with the Child's class had subtitles and adequate volume, were not taken. Further, we have had no satisfactory evidence of systematic planning within schemes of learning for hearing impaired children to enable them to access the curriculum. There was also little evidence of ongoing training of staff in relation to hearing impairment beyond the first day of the school year.
14. Further, there was no satisfactory evidence regarding the provision of speech and language therapy, despite the Child's speech and language skills being significantly delayed. We would have expected detailed evidence in the documentation of work being carried out with the Child in relation to speech and language therapy. There is no real evidence that she was receiving direct input from a speech and language therapist on a regular basis. At page 866 in the bundle the speech and language therapist responsible for the Child, provided a list of work they had carried out, which only refers to the Child on three occasions over the year and a term the Child spent at School A.
15. We noted the evidence of some progress in relation to curriculum subjects following teacher assessments at School A. We were also concerned to note, however, that in July 2011 an educational psychologist, found the Child's reading, spelling and number skills to be very limited (On the 1st, 0.1st, and 5th percentile, respectively.) It is agreed by the parties that the Child is an average ability child who is significantly underachieving in literacy and numeracy. We take account of the fact that the Child's hearing impairment and language development difficulties will also be contributing to the Child's literacy and numeracy difficulties.

16. It is in the above context that the Child began to complain of head and stomach aches and to have an increase in flare-ups of their eczema. On occasions the Child would be absent from school as a result. The Parent associates these illnesses with stress, and their GP, in a report dated July 2011, states:  
"I can confirm that the Child has been treated for atopic eczema and that they have been suffering from stress because of problems at school and insomnia".
17. By Christmas 2011 the Child had become very unhappy at School A and her family decided to move her to School B. We therefore have the advantage in this case that we have been able to see how the Child responds when placed in a different context. The Child has thrived at School B. The auditory systems used there enable the Child to hear not only the teacher, but also all of their classmates. As all the class use equipment to aid their hearing this is the norm, and the Child uses the equipment without demur. We also note that because of the way the classrooms are set up (in a horse shoe shape facing the teacher), and because class sizes are small, the Child is able to lip read far more effectively. The Child has found the environment has enabled her to partake better in lessons. The Child has found that she is able to understand the content of lessons better, and, unsurprisingly, all this has boosted their confidence and enabled the Child to ask for additional explanation and help when they need it. We note that the Child is making friendships and the health issues have resolved in the main. We find that the Child feels included in this setting. It may be that this environment has enabled the Child to become more accepting of their hearing impairment. We also note that the teaching staff feedback from School B has been very largely positive.
18. We have had the benefit of two reports compiled by an educational psychologist. The first in time we believe should be dated July 2011. When assessed by the Educational Psychologist the Child had already spent a trial week at School B. The report states: "The Child described the positive feelings they felt when they were part of the deaf community and realized that this is missing from their experiences in School A." "The Child said that they don't feel like they "fit in" at School A". The Educational Psychologist recalled that the Child also told the Educational Psychologist that they felt they needed to be in an environment where "it's fine to be deaf". The Educational Psychologist's assessment of the Child was as follows: "The Child's views appear to be well thought through and the Child has considered the implications of being educated in a specialist residential school in comparison to a mainstream school. However, the Child remains certain that their current placement is no longer suitable."
19. Within the concluding paragraphs the Educational Psychologist states as follows: "The Child should have access (to) a broad and balanced curriculum appropriately differentiated to the Child's abilities. It is vital that all staff are aware of the Child's skill level and ensure that all work is differentiated and accessible to the Child. This includes the Child's ability to read and interpret the work as well as their ability to process and record the work." "The Child needs opportunities to meet with children of a similar need so that they can develop positive relationships. However, they should also try and maintain relationships with friends in the hearing community, although I recognize this is difficult for the Child at present. Obviously, the Child's school environment

should meet these needs in the main .....” “The Child needs to be encouraged to ask for support and feel confident to say when their learning needs are not being met in the class. The Child will only develop the skill when they feel safe and secure in their learning environment and the social group of the classroom.”

20. The Child’s response to attending School B reinforces the Educational Psychologist’s conclusions. The contrasting picture of the Child within the two school settings leaves us in no doubt that the Child’s needs were not being adequately met at School A.
21. Taking all of the above into account we find that the Child has an urgent and pressing need to have their social and emotional developmental needs met, to improve the Child’s literacy and numeracy skills, to access direct and frequent speech and language therapy, particularly to aid the understanding of language, to raise the Child’s self-esteem and confidence, and to feel secure in their school placement. We have also concluded that School A is unable to adequately meet the Child’s needs.
22. The parties have not suggested that any other school can meet the Child’s needs save for School B. There is no other provision available within the Local Authority area. The LA accepts that School B can meet the Child’s needs. We have therefore named School B special school in part 4 of the Child’s statement.
- 23.. As a consequence of our decision that School A cannot meet the Child’s needs we will not go on to consider the secondary issue raised by the LA that a placement at School B would constitute unreasonable public expenditure for the purposes of section 9 of the Education Act 1996. That issue would only have arisen if we had found that School A could meet the Child’s needs.
24. We are grateful to the parties for providing a colour-coded working document, which sets out their differences as to the content of parts 2 and 3 of the Child’s Statement. The issues had been narrowed as a result of their work, and were narrowed further to some extent prior to, and during, the hearing today. Nevertheless, there were certain matters that we have had to determine in terms of the content of parts 2 and 3 of the Statement. Some of the wording has had to be altered to reflect the fact that the Child will now remain in a special school.
25. In relation to the issue of whether or not the Child is an articulate and mature young person, there was an issue as to whether or not the Child’s presentation in this way in fact masked their difficulties so as to be misleading. We have decided to alter the wording to state that the Child “presents as” an articulate and mature young person. It is our view that this reflects the way that the Child does present, but also should place the reader upon notice that this is a matter of the Child’s presentation only.
26. In relation to page 6 of the working document there was an issue as to whether some of the Educational Psychologist’s conclusions needed to be expressed in part 2, given that their report would be annexed to the Statement, or whether they should be set out more fully. We have concluded that they should be set out more fully insofar as they do not conflict with a placement at a special school. We have accepted the Educational

Psychologists reports and agree that the Child has a specific need to feel safe and secure and to be in an environment where it "it's fine to be deaf" and needs considerate support.

27. On page 7 there was an issue as to whether the Child also has a specific learning difficulty. This had been suggested by another educational psychologist, in their report following their assessment of the Child in June 2011. Their view was really based upon one test result relating to digit span. We prefer the other Educational Psychologist's view as expressed in their addendum report at page 868 in the bundle where they say: "However, as the Child has documented difficulties in several areas related to language, literacy, numeracy and memory, there is a wider area of deficit in the Child's skills than just literacy and therefore not, in my view, a Specific Learning Difficulty with Literacy. I would argue that these can be accounted for as a result of her Hearing Impairment." We think this more accurately reflects the position upon the evidence currently available.
28. We also accept the evidence we heard from a speech and language therapist, as to the need for the Child to receive speech and language therapy, directly from a speech and language therapist on a regular basis, and in accordance with a program and careful monitoring as to progress. We have accordingly made provision for this in the Statement; in a way that we hope is consistent with the Child's placement at a special school.

## **CONCLUSION**

Accordingly, the Statement of Special Educational Needs in the case of the Child is amended in accordance with the draft annexed hereto and School B is named in Part 4.

### **Order**

The Statement of Special Educational Needs maintained in respect of the Child is amended in accordance with the copy annexed hereto.

**Dated March 2012**

**Chair**