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## **DECISION**

<b>Date of Birth:</b>	1997	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Contents of a Statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of hearing:</b>	2013	
<b>Persons Present:</b>	The Parents	<i>Parents</i>
	LA Representative	<i>Educational Psychologist</i>

### **Appeal**

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

### **Decision**

2. This appeal concerns the Child who was born in January 1997 and is presently 16 years of age. The Child attends School A within the Speech and Language Specialist Teaching Facility (STF). The Child is sitting their GCSEs this year. The Parents are realistic about the Child's academic prospects, and accept that the Child would be unlikely to manage an academic curriculum that includes A-levels, and a mainstream school 6th form would therefore be an inappropriate placement for the Child. The Child's General Conceptual Ability has been averaged at 86, but the Child's overall cognitive profile is uneven, and therefore any overall figure needs to be treated with caution. There is a significant difference between verbal and non-verbal functioning scores.
3. The Child lives at home with their Parents and older sibling. Both Parents work and older sibling will be leaving to attend university in September/October 2013.
4. The Child is now approaching transition to post 16 education. The local authority have recommended that the Child attends School B, which would result in the Child's Statement lapsing, but the Parents' choice is School C, which provides for pupils with moderate to severe learning difficulties and severe and challenging autism, and their associated additional difficulties, from age 4 to 19.
5. The wider social context of school is of importance in this case, in that there

has been a history of significant difficulties with bullying and social functioning at the Child's present school. The Child has no friends in or out of school. The Child attends no social activity save for swimming and drama club, both of which are set up and cater for young people with additional needs. The Child can appropriately be described as "vulnerable". This even extends to the Child being asked about their views in this case. The Child can become upset at being asked their views, and the Child's Parents are aware that the Child wishes to please and can be compliant. The head of the STF describes the Child as socially fragile. The Child does not like change. The Child has difficulties with social interaction. The Child's Parents are concerned that the Child is "given the best chance to flourish," through a further educational placement, and prior to the Child entering the adult world.

6. The issue for the Tribunal is confined to the further educational placement for the Child. We are aware that if we do not name a school in the Child's Statement it will lapse, whereas if we do it will continue until the Child finishes school or reaches the age of 19.
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 the evidence that we have read and heard.
8. In relation to the Statement in this case, the Tribunal was horrified at the degree to which it has become out of date. It contains references to matters appropriate to a 3-year-old, and not a young person of 16. Considering that the Statement should have been considered prior to each Annual Review over the last 13 years, including the recent transition reviews, we wholly fail to understand how this has come about. It is a serious and repeated lapse. We also note that the Special Education Needs Panel relied on this document as part of the information it considered when arriving at its decision in respect of a placement post 16 for the Child. We further note that it would have relied upon an educational psychology report dating back to 2007, which is 6 years out of date.
9. We have also not been assisted by the local authority in that we have not been provided with any Individual Education Plans for the Child, the criteria used by the Special Educational Needs panel, or any minutes of the 2 meetings at which the Child's placement was considered. The Child's Parents have only recently been provided with the criteria themselves, and have been supplied with no minutes. It is hardly surprising, in this context, that they are concerned as to how it is the panel arrived at its decision.
10. Initially when considering this appeal we had to decide whether there was sufficient evidence for us to make a decision. We were assisted by the oral evidence given by the parties, however, and are aware that any further delay would have a severe effect upon transition planning for the Child.
11. We were also advised that Careers Wales, who are responsible for compiling a Leaving and Skills Plan to set out the Child's' needs and the support the Child requires should the Child attend at School B, have not undertaken this

task. This is because, it is said, the Parents preferred a school placement. We also note that there has been no discussion with the Child's Parents as to the Child's needs and the support the Child might require at college.

12. The local authority's case was that the Parents' choice, School C, was not suitable for the Child as the Child was too able cognitively. At page 111 in the bundle it states:

*"The Child's cognitive profile and current engagement with mainstream subjects suggested that the provision at School C would not be an appropriate one to meet the Child's needs."*

They continue at page 112 that it would be:

*"Detrimental to the Child's best interests, which are to be supported in line with the Child's diagnosed Autistic Spectrum Disorder (ASD), the Child's abilities to access a mainstream curriculum with support and the Child's average non-verbal abilities"*

13. The Local Authority therefore suggested School B, at which the Child could undertake a Diploma in Life and Living skills, Level I. We were told that in relation to this course the Child would be taught in a group of 8 with a staff ratio of 2 to 1. We have no evidence regarding what else the Child would do at School B, other than that the Child would not be considered as suitable for mainstream courses, despite the Child showing an interest in catering. Neither do we have evidence of the support the Child would receive. We were aware that there was a degree of supervision in unstructured time (see page 147), but this would not be individual support for the Child, or as part of a program to meet the Child's socialisation needs.
14. We should add that we were informed that the Head teacher of School C contacted the Parent by telephone. Part of the conversation was to the effect that a place was available for the Child at the School. It is uncertain what information the Head teacher had about the Child at the time of this conversation, and we therefore place no reliance upon it.
15. We were also told that the Child would be offered the support of the Real Opportunities Program, which, for example, would provide work experience opportunities. This, however, was provided outside of the support offered by School B, and as we understand it, would be offered in relation to either placement.
16. At page 150 in the bundle the head of the STF at a Specialist Teaching Facility, sets out recommendations as to how the Child's needs need to be supported. It is noteworthy that the first two items on the list focus on social skills and interaction. These are matters that need to be addressed in a school setting in our view, as the list suggests.
17. The Head Teacher also sets out a list at page 150 of the issues that would need to be addressed in a college setting, but we have been provided with no

evidence as to how School B would meet these.

18. The Child's Parents independently visited School B and School C. They accept that neither would meet all of the Child's needs, but have chosen to pursue a placement at School C. Their view is that the Child is not yet ready for a placement at College; that the Child is too socially immature and vulnerable in view of the Child's previous experience at School A. They were also concerned about the lack of support during unstructured times. It also appears that there was a possibility the course would only run for 4 days each week, and not 5, which would create difficulty for the family as it would leave the Child unoccupied for that day each week.
19. The Parents regard School C as being a more supportive setting, which would be well-suited to the Child's socialisation needs. It also has experience in teaching and supporting young people with Autism up to the age of 19. Although it caters also for moderate and severe learning difficulties, and therefore the Child would be cognitively more able than many of the pupils, we agree with the Parent that this may positively assist the Child's self esteem.
20. As we understand the position, the Child has never had a programme specifically to help the Child with their social interaction, or to assist the Child to generalise social skills in a life setting.
21. The curriculum at School C would result in the Child being able to continue with their core subjects, but with the emphasis being on life skills and practical application of core subjects. For example, the Child would carry out Maths tasks, but they would be practically orientated with money. The Child would be able to undertake an enterprise initiative and also have access to the Duke of Edinburgh award scheme.
22. Following their visits, the Parents found School C to be relaxed, and the pupils appeared to be more verbal and mature than the Child's current level of functioning. This meets the Parent's main concern for the Child at present. At page 22 they state:  
  
*"In our opinion it is crucial that the Child is given the opportunity to develop their social and life skills."*
23. We agree with the Parents view. We think this needs to be the current educational priority. Without developing these skills, for example, the Child might attend School B but be unable to function adequately in such a setting, and not continue to attend. The Child would find School C a more nurturing environment and not one, hopefully, where the Child would suffer some of the difficulties that the Child has suffered at their current school. We note the reference, for example, at page 22 where the Child was found banging their head on the door and pulling their hair out whilst being verbally abused by a group of mainstream pupils, and also the difficulties which arose as long ago as year 7 in relation to PE because of problems with other pupils in the changing room.

24. It is our view that School C would prepare the Child for college. We note that pupils at School C attend School B for one day a week, and regularly move on to School B. In the concluding remarks to us the Parent said in relation to the Child, that the Child needs to be “given the best chance to flourish”. It may well be the case after a period at School C the Child will be functioning at a level of maturity and socialisation that will enable the Child to move to School B, which by then the Child will have become familiar with, from their regular visits there. This will have to be kept under review, and will also have to be reviewed at the Annual Review. We were also advised by the LA Representative that the Child’s Statement would be considered and updated at an early Annual Review if the Child should attend School C.
25. Having carefully considered the evidence available to us, we conclude that the most important current need for the Child is for the Child to develop socialisation and life skills, and to improve self-confidence. We are firmly of the view that School C will better meet these needs and is presently a more suitable placement for the Child. Further, we have insufficient evidence to be persuaded that School B can meet the Child’s needs at the present time.
26. In any event, the Parental choice is School C and this brings into play Schedule 27 paragraph 8 of the Education Act 1996. This provides:
- (1) *Subparagraph (2) applies where;*
- “the parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the local authority to substitute for that name the name of a maintained school or maintained nursery school specified by the parent, and the request is not made less than 12 months after— an earlier request under this paragraph, the service of a copy of the statement or amended statement under paragraph 6, if the parent has appealed to the Tribunal under section 326 or this paragraph, the date when the appeal is concluded, whichever is the later”.*
- (2) *The local authority shall comply with the request unless;*
- i. “the school is unsuitable to the child’s age, ability or aptitude or to his special educational needs, or*
- ii. The attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.”*
27. SM v Hackney Learning Trust [2013] UKUT 078 (AAC), [2013] ELR 321 confirms that the duty upon the Local Authority to name the school preferred by the Parents is an absolute one, unless one of the exceptions applies. The onus is on the Local Authority to prove, on a balance of probabilities that one of the exceptions applies: otherwise it is obliged to name the Parents preferred school in Part 4.

28. We have concluded that the Local Authority has not produced sufficient evidence for either of the exceptions to apply, and therefore in addition to our own conclusions, Parental choice must prevail.

### **Conclusion**

29. We therefore allow this appeal and name School C as the placement in part 4 of the Child's Statement.

### **Order**

The Statement of Special Educational Needs maintained in respect of the Child is amended to name School C as the placement in part 4.

**Dated June 2013**