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## **Decision**

<b>Date of Birth:</b>	1994	
<b>Appeal of:</b>	The Parent	
<b>Type of Appeal:</b>	Contents of a Statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of hearing:</b>	2011	
<b>Persons Present:</b>	The Child	<i>Child</i>
	The Parent	<i>Parent</i>
	Parent Representative	<i>Solicitor</i>
	Parent Witness	
	Parent Support	<i>Support</i>
	LA Representative	
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	

### **Appeal**

The Parent appeals under Section 326 of the Education Act 1996 against the contents of a Statement of Educational Needs (the Statement) written by the Local Authority in respect of their Child.

### **Facts**

1. The Child was born in October 1994 and is 16 years of age. The Child lives with their mother. The Child's parents are separated, and the Child's two older siblings live with the Child's father. The Child sees their father regularly. The Child is aware that their parents have difficulties in having any form of contact with one another
2. The Child attended a nurture class at School A until July 2006 because of concerns regarding the Child's behaviour. The Child has a diagnosis of ADHD and of dyslexia
3. In September 2006 the Child transferred to School B, which is a mainstream school. The Child received no additional support at school. It is the Parents belief that this was inappropriate, and that as a result the Child was often in trouble with staff at the school
4. In the summer of 2008 the Child's parents and family separated. The Child has lived alone with their mother ever since, although we are informed that the Parent has recently asked that the Child be voluntarily accommodated by the LA because of their difficulties in managing the Child's behaviour, which can be aggressive towards the Parent.

5. The statutory assessment process was commenced in May 2009. It resulted in a Statement dated December 2009. The Parent appeals against Parts 2, 3 and 4 of that Statement. She seeks placement at School C which is a private school that caters for children with certain special educational needs. The LA suggests that the Child should attend School D, a state funded special school, with, additionally, attendance at EOTAS (Education Otherwise than at School.)
6. The Child had not attended school since November 2009.
7. When the Child's case first came before us in January 2011 the Child was still not in school or receiving any form of educational provision. The case was adjourned by consent because of the difficulty in considering all the issues in the time available, for an issue about a report on School C to be resolved and to allow the parties to discuss ways of reengaging the Child with educational provision. Since then the Child has attended part time at EOTAS and School D, including specialist literacy sessions and practical work, and has been for a further 3 day assessment at School C.

### **Preliminary Issues**

Although there was some discussion about the case being adjourned because of the recent request by the Parent for the Child to be accommodated by the LA, which might cause the Child to be placed away from the area of a school named by us in Part 4 and render our decision otiose, and also about an item of late evidence on the part of the LA, no applications were in fact pursued.

We saw the Child before the start of the Tribunal hearing to reassure them about the hearing and discuss with the Child their views. Thereafter the Child attended throughout the hearing.

We also received a request to allow a friend of the Parents to attend to support the Parent and permitted this.

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

We were provided with a Working Document, a version of the Statement upon which both sides had worked, which helpfully narrowed the issues. During the hearing of evidence further issues were agreed. We therefore will confine this decision to the areas where the parties were not able to agree. We have set them out under headings. In arriving at our decision we have considered all of the evidence we have heard and read, section 326 of the Education Act 1996, and the Special Educational Needs Code of Practice for Wales, and we have applied the civil standard of proof.

#### **A. Speech and Language Therapy**

When the Child was much younger they had a difficulty with speech production. Indeed the Child did not speak at all until a late age. The

Parent argues that the Child requires Speech and Language Therapy on a regular basis now. The Parent relies upon the reports of Speech and Language Therapist, and School C. The LA rely upon the report of also a Speech and Language Therapist and to some extent also on the report of another Speech and Language Therapist.

- B. We found it striking that the reports of both Speech and Language Therapists refer to the low scores produced upon testing the Child, but both find these test results not to be a true reflection of the Child's language abilities, because they simply did not reflect the Child's ability to communicate with them in conversation. Test results can, of course, only tell part of the story, and it is the interpretation of those results by the expert that ultimately is of importance.
- C. We reject the conclusions of the Parents Speech and Language Therapists as to the Child's need for Speech and Language Therapy because it is clear from their report that they have no evidential basis for coming to this conclusion. We also reject the conclusions set out in the School C report, as the report does not set out who has come to the conclusions contained in it, and we therefore have no idea as to the expertise, qualifications or experience of the individuals concerned. We accept the findings of Local Authority Speech and Language Therapist.
- D. We also note that there is no reported history of the Child having expressive or receptive language difficulties, as opposed to speech production difficulties.
- E. We therefore find that there is no sufficient evidence that the Child has speech and language difficulties, save for the agreed difficulties with social communication skills. We have amended the Statement accordingly.

F. Vulnerability

The Parent seeks to rely mainly upon the report of School C in respect of the Child's vulnerability. We have set out our criticism of this report above. That report follows a 3 day assessment period at the school. The report stated that the Child appeared to have a need to be tactile with females and aggressive with males, and was vulnerable as a result because of the likely reaction of peers to such behaviour.

- G. In School D and at EOTAS there have been no reports of such behaviour. Indeed the Parent fears that the Child would behave inappropriately towards female staff on a one to one basis have proved to be entirely unfounded. The Child has been observed in School D and EOTAS for a longer period than at School C. If the Child's behaviour was consistent across all settings we are sure it would have been revealed at School D and EOTAS. It has not been.
- H. Consequently we find that there is no sufficient evidence to support a conclusion that the Child is more vulnerable than other young males of the Child's age.

- I. We also note the accepted evidence that in everyday matters the Child has been seeking to take charge of their own affairs: the Child has been making their own appointments with professionals, is at home at times on their own and travels by train alone. The Child has also contributed to the planning of the Child's present educational programme.
- J. We therefore conclude that the Child does not require extended day provision.

K. Laptop

It was contended by the Parent that the Child requires a laptop. We note that at present the Child has a limited school programme, and that there is Information Technology available to them at School D. The Child is also being required to undertake little work outside of school and we heard that any coursework would be completed at school with support and using the school facilities. We therefore find that a laptop computer is not required by the Child at present or for the foreseeable future.

L. Occupational Therapy

We have had the benefit of a report compiled by an Occupational Therapist, following their assessment of the Child. At page 340 in the bundle it concludes:

“Overall in my opinion the Child certainly does not meet the criteria for a motor coordination disorder or dyspraxia. The Child's main area of difficulty was with the poorly balanced pencil grip. This may have affected the Child's performance on fine motor integration and the Child's main difficulty appeared to be when they lost focus when doing the task too quickly. There is no reason why the Child could not do the fine motor integration tasks if the Child remained focused and no particular motor and sensory issues were identified.”

- M. We accept the clear conclusion, as set out above. Accordingly we find there is no sufficient evidence to establish that the Child requires Occupational Therapy.

N. Part 4 – School

At page 399 in the bundle is the prospectus for School C. It states that the school provides:

“Special education, therapy and care for children and young people aged 5 to 19 with speech language and communication needs and/or Asperger's Syndrome.”

- O. Whilst the Child does have some social communication difficulties, the Child has no other speech and language difficulties and the Child does not have Asperger's. We have also found that the Child is not vulnerable and does not require an extended day curriculum. Consequently, we find that School C would not be suitable to meet the Child's needs.

- P. School D is a special school, which has 102 pupils who are taught in small classes. It caters mainly for children with moderate learning difficulties. The Child does not fall into this category. However, we accept the evidence we heard that it has other children and young persons in attendance who have a diagnosis of ADHD and similar difficulties to the Child, and who are of average cognitive ability. An appropriate peer group can therefore be provided, and we note that this has not been an issue during the days that the Child has attended the school to date. Young persons attending the AOTAS provision are also of average ability and can similarly provide an appropriate peer group.
- Q. We note that School D has a high staffing ratio and provides accredited courses. Together with the AOTAS provision it has been able to provide a flexible package tailored to the Child's preferences and needs. The interim engagement package has engaged the Child well. There is now scope to further challenge the Child and extend the Child's time in education, with the aim of providing a full time curriculum encompassing educational and vocational programmes.
- R. We accept the evidence of the LA Witness, Educational Psychologist, that the Child understands their needs to engage and is now engaging in a very mature way.
- S. We also heard evidence, and accept that a social communication programme can be provided at School D.
- T. We also heard evidence, and accept that the support to be provided for the Child can be provided across all educational settings and that continuity will be assured by the continuing provision of a key worker, and by regular meetings of the staff involved with the Child from all settings.
- U. We appreciate that the Child stated to us that they wished to attend School C, but have to place the view in the context of their present home circumstances where the Parent has asked for the Child to be accommodated by the LA. We also note that that the Child engaged well with the interim package provided by the LA, and hope that the Child will continue to do so. The Child clearly understands the need to acquire literacy and numeracy skills in order to succeed as the Child wishes to and has enjoyed and succeeded at the vocational activities provided for them. We also take account of the fact that the LA package is provided locally, and this will enable the Child to maintain links with their family and community.
- V. We therefore conclude that the Child's educational needs can be adequately met by a placement at School D and EOTAS.
- W. Lastly, we feel it appropriate to indicate that we have sympathy for the Parent's view that more could have been done by the LA to meet the Child's educational needs at an earlier stage, but hope that the Parents and the Child will feel able to now seize the opportunities that are now being provided for the Child.

## **Conclusion**

- A. The Statement of Special Educational Needs in the appeal of the Child is amended in accordance with the draft annexed hereto, which incorporates those matters agreed by the parties and reflects the matters we have been called upon to decide.

## **Order**

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

**Dated May 2011**