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Decision

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| Date of Birth: | 1998 | |
| Appeal of: | The Parents | |
| Type of Appeal: | Contents of an amended Statement | |
| Against the Decision of: | The Local Authority | |
| Date of Hearing: | 2011 | |
| Persons Present: | The Parents | <i>Parents</i> |
| | Parents Representative | <i>Representative</i> |
| | Parents Observer | <i>Observer</i> |
| | LA Representative | <i>Barrister</i> |
| | LA Witness | <i>Educational Psychologist</i> |
| | LA Witness | <i>Head of Provision</i> |

Appeal

The Parent and grandparent appeal under s.326 of the Education Act 1996 against the contents of an amended Statement of Special Educational Needs issued by the Local Authority in respect of their Child/grandchild. The amended Statement is dated July 2010. The appeal is in respect of Parts 2, 3 and 4 of the Statement.

The current hearing follows on from an adjourned hearing dated January 2011. Since the adjourned hearing the Local Authority has concluded a re-assessment of the Child's special educational needs and it has issued a proposed amended Statement dated March 2011.

The Decision relating to the adjourned hearing of January 2011 should be read in conjunction with this Decision.

Preliminary Issue

At the start of the hearing the LA Witness, Head of Alternative Provision, was discharged from further attendance as it was agreed that neither the parties nor the Tribunal considered it necessary to hear evidence from them.

Facts

1. The Child was 13 years and 1 month at the time of this second hearing.
2. The Facts set out in the Decision of January 2011 remain pertinent and should be read along with the Facts set out below.
3. The Child's special educational needs continue to be as described in the Facts of the previous hearing.

4. The Child has been disengaged from school since the summer of 2010. The Child also continues to be withdrawn and spends much of their time in their room.
5. Interim tuition for the Child of 2 hours per day started in January 2011 at the Child's grandparent's home and it ended in March when the Child's tutor, left. Both parties agree that it has proved difficult to engage the Child fully with the tuition that has been on offer to them. LA Witness, an Educational Psychologist, reports that over this period January – March the Child engaged with a relatively limited number of the sessions that were offered to them and it was said that the tutor reported that only a few of the sessions that were taken up were successful. When appointed the Child's tutor did not have any specific training or experience in tutoring children with ASD. They had participated in a one day training course on ASD in February 2011.
6. The Local Authority is of the view that the Child's needs are such as to require a specialist placement. At the time of this hearing the Local Authority was not able to propose a specific special provision. It has made formal approaches in respect of a possible placement for the Child at School A and to School B. The Tribunal was told that the Local Authority Panel met in March 2011 and agreed that both special schools should be approached and both the Local Authorities were then written to at the end of March 2011. In respect of School A, an assessment will take place at the Child's home shortly after the Easter holidays. In respect of School B, the papers have been passed onto the LA Educational Psychology Service to ascertain whether the School would be suitable for the Child.
7. Educational Psychologist (LA Witness) told the Tribunal that the Local Authority has successfully placed other children with ASD at both schools. School A is a maintained provision specifically for children with ASD and School B is a maintained school that caters for a range of special educational needs including ASD. Both schools are approximately the same distance away from the homes of the Parent and Grandparent and both parties agree that it is likely to take around 35 minutes to travel to and from either school. In recognition of the distance of special provision from the Child's home and taking into account the difficulties that the Child has experienced with travelling to and from school in the past, the proposed amended Statement indicates that the Local Authority will provide the Child with transport to the relevant special provision that will eventually be identified in the Statement.
8. The Parent and the Child have visited School A and they propose to visit School B as soon as possible. The Parent told the Tribunal that they were very impressed with the facilities on offer at School A. The Parent said that although some of the children in the School appeared to be severely affected by ASD it was led to believe that if the Child attended the School the Child would be placed in a small class of children with

needs similar to that of the Child. The Parent and the Child were introduced to the class during their visit.

9. The Parent Representative told the Tribunal that both schools had been approached by SNAP. In respect of School A they were told that a place will not be available until September 2011. The issue for the School is how to accommodate the Child in the context of the needs of existing pupils at the School. In respect of School B they were told that places are available and the School appeared very keen for the Child to attend.
10. At the start of the hearing both parties told the Tribunal that a placement for the Child at School C was not an option. The Local Authority stated that the Child would not be able to meet the admissions criteria relating to a fixed percentage attendance in mainstream classes and it was understood that the Base was full. The Parent and grandparent were of the view that the School was no longer suitable for the Child, although they acknowledged that it was considerably closer to home for the Child than either School A or School B. By the end of the hearing the Local Authority had been able to ascertain that exceptionally it may be possible to waive the admissions criteria in the Child's case and that a place might be available for the Child in School C.
11. It has proved difficult to engage the Child fully in the reassessment process. The Educational Psychologist and the Parent and grandparent worked collaboratively and creatively to enable the Educational Psychologist to meet with the Child at MacDonald's and through the medium of a computer based assessment process the Educational Psychologist was able to engage the Child to an extent in a conversation about themselves, friends, likes, dislikes and strengths and areas where the Child feel they might do better with help. The Educational Psychologist also wrote to the Child and asked a number of questions which the Child answered with the support of the Parent.
12. Taking into account the information in the report that the Educational Psychologist prepared following on from the conversation with the Child and taking account of the evidence that the Educational Psychologist and the Parent gave to the Tribunal it is clear that the Child continues to be of the view that they do not want to return to the School and the Child would very much like to have more friends and be able to access a social network of their peers successfully. The Educational Psychologist felt from the conversation with the Child that the Child was torn between this desire for friendships and a preference not to be attending school at all. The Parent and grandparent continue to believe that the Child wants to attend a small special unit.
13. Pending the identification of a suitable special provision for the Child the Local Authority propose to re establish tuition immediately after the Easter holidays in line with the aims set out in the agreement regarding tuition at the last hearing.

14. At the start of the hearing the parties were in disagreement concerning a limited number of matters relating to Parts 2, 3 and 4 of the proposed amended Statement of March 2011. Through the course of the hearing the parties were able to reach agreement on all outstanding issues.
15. In respect of Part 2 of the Child's Statement the main areas of disagreement were around the Educational Psychologist's understanding of the Child's views as reported in the proposed amended Statement. These matters were resolved by the parties agreeing to include the understanding of the Parent and grandparent in addition to that of the Educational Psychologist.
16. In respect of Parts 3 and 4 of the Child's Statement the two main areas of contention between the parties related to the Local Authority's proposal that there may need to be a phased return to school and to the inclusion of the term "daily" in respect of the school to be described in Part 4. The Parent and grandparent agreed to concede the need for a possible phased return to school on the basis that the return should be for 5 mornings per week initially so that the Child established a good routine of getting up and going to school each day straight away. After considerable discussion around the reason for the Local Authority stipulating that the placement should be "daily" the parties were able to agree to remove the reference as being unnecessary. It was agreed that the Child's special educational needs were such as to place a considerable strain on the Parent and the grandparent as the Child's carers but they were not such as to require a residential placement in themselves at the present time. So as to address the issue of support for the Parent and grandparent in caring for the Child the Local Authority agreed to make an immediate referral to Children's Services, such that the Parent and grandparent would be contacted within 7 days of the hearing to arrange for an assessment to take place.
17. Both parties agreed that at the present time Part 4 of the Child's Statement should describe a type of educational provision that was suitable for the Child's needs rather than name a particular school. The parties were able to agree a form of wording for Part 4 during the hearing. The Local Authority indicated that it would amend Part 4 of the Statement to name a particular school as soon as the appropriate provision was identified. Neither party supported a further adjournment of the proceedings pending the identification of specific school provision.

Tribunal Conclusions and Reasons

In reaching the decision the Tribunal carefully considered the written evidence of the parties and the evidence given at the hearing. The Tribunal also considered relevant sections of the Education Act 1996 and supporting Regulations and the relevant provisions of the Special Educational Needs Code of Practice for Wales.

- A. The parties were able to agree all outstanding areas of dispute in respect of Parts 2, 3 and 4 of the Child's Statement during the course of the hearing. The agreed Statement is attached to this Decision and is marked as Appendix A.
- B. In respect of the agreed amendments to Parts 2 and 3 of the Child's Statement the Tribunal agreed to endorse the proposals of the parties. The Tribunal considered that the compromises reached by the parties in respect of the main outstanding issues, as outlined in brief in the Facts, were sensible in the circumstances and appeared to be in the Child's interests.
- C. In respect of Part 4 of the Child's Statement, the Tribunal was disappointed that the Local Authority was not able to identify a suitable special provision for the Child such that a school could now be named in Part 4 of the Statement. At the last hearing the case had been timetabled so as to give the parties time to identify a suitable placement for the Child. It is a matter of some regret that the Local Authority did not contact the other Local Authority until March regarding possible placements at School A and School B, when the Local Authority Panel appears to have authorised these approaches in early March.
- D. Both parties were in agreement that the Tribunal should describe a type of provision rather than name a specific school. Neither party was as yet in a position to identify a suitable named school.
- E. This left the Tribunal in some difficulties. The Tribunal had anticipated being in a position to name a specific school placement in the Child's Statement as a result of the adjournment it had granted in January 2011. It was not in a position to do this after the current hearing as neither of the parties had as yet identified a specific placement. The Tribunal considered whether it should order an adjournment of the proceedings to give the parties further time to identify specific schools that could address the Child's needs. However, the Tribunal agreed with the parties that a further adjournment of these proceedings was not in the Child's interests.
- F. The Tribunal, after very careful deliberation and in the particular circumstances, decided to approve the approach endorsed by the parties and ordered that Part 4 of the Child's Statement should describe the type of provision suitable for the Child's special educational needs. The description of the type of provision is set out in Appendix A.
- G. The Tribunal was satisfied on the evidence it heard from the parties that it would be possible to identify a particular school in Part 4 of the Child's Statement in a reasonably short space of time and it accepted the evidence of the Local Authority that it would quickly proceed to amend the Child's Statement and name a particular school in Part 4. It was possible that the parties would reach agreement as to the specific school that should be named in the Statement and that further recourse to legal proceedings would prove unnecessary. However, in the event of a

disagreement concerning the appropriate placement the Parent and grandparent would be able to appeal to the Tribunal following on from the amendment that the Local Authority would make to Part 4. In the unlikely event that the Local Authority did not proceed to amend the Child's Statement in the way indicated to the Tribunal the Parent and grandparent would be in a position to challenge this through complaint to the Minister and/or through the judicial review process.

- H. In reaching the decision the Tribunal took into account the fact that a re assessment of the Child's special educational needs had just taken place and was now complete and the fact that both parties now appeared to have a clear and agreed understanding of the Child's special educational needs and the type of provision that was required to address those needs. The Tribunal also took into account the fact that approaches had been made to two particular special schools that fitted the description of the provision that was necessary to address the Child's special educational needs.

Order

- I. By agreement of the parties the Local Authority is to amend Parts 2, 3 and 4 of the Child Statement in accordance with the agreed proposed amended Statement at Appendix A.

Dated April 2011