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Decision

Date of Birth: 1995
Appeal of: The Parents
Type of Appeal: Contents of a Statement
Against the Decision of: The Local Authority
Date of Hearing: 2011
Persons Present: The Parents *Parents*
LA Representative *Barrister*
LA Witness *Head teacher School A*

Appeal

The Parent supported by their Partner appeals under section 326 Education Act 1996 against the contents of part 4 of a statement of special educational needs made by the Local Authority for their Child.

Preliminary Issues

The LA applied to admit late evidence in the form of:

- i. Annual review October 2010
- ii. an e-mail from School B January 2011
- iii. an application form for admission to a community school

This documentation had been served on the appellant and they had no objection to the documents being admitted in evidence. The criteria under regulation 33(2) were satisfied and the documents were admitted in evidence by the tribunal.

Facts

1. The Child was born in November 1995 and is now fifteen years and three months of age. The appellant is the Child's Parent who is supported by their Partner.
2. The Child has been in receipt of a statement of special educational needs since March 2006 due to behavioural issues. The Child has attended numerous primary and secondary schools, the Child's most recent schools being as follows :

School C	06.09.2005 – 31.08.2007
School D	01.09.2007 – 05.12.2007
School E	03.12.2007 – 30.06.2008

School F	30.06.2008 – 27.02.2009
Home education	27.02.2009 – 01.12.2009
School G	02.12.2009 – 20.07.2010
School A	06.09.2010 – present day

3. In December 2008, the annual review held at School F concluded that the Child's special educational needs placed them beyond inclusion in a mainstream school. In September 2009 a proposed amended statement was issued naming School A.
4. The Parent then applied unsuccessfully for the Child to be admitted to a High School. In February 2009 the Child was removed by the parents from School F with a request that the Child be educated at another mainstream school. The Child did not attend any school for almost ten months.
5. In May 2009 the Care Advisory Panel considered that the Child's needs would best be met at School A. However after a period of not attending any school, the Child's parents applied for the Child to be admitted to School H. The Child was enrolled at that school in December 2009.
6. In May 2010 the Child was permanently excluded from School H although this exclusion was subsequently overturned upon appeal. Following advice from the annual review the Care Advisory Panel again recommended that a placement at School A would best meet the Child's needs. This resulted in the issue of a statement of July 2010 naming School A in Part 4. The Child has attended School A since September 2010.
7. The annual review held in October 2010 concluded that School A could make the provision set out in Part 3 of the statement.
8. This appeal was issued in July 2010 with the Parent indicating a preferred placement at School B. School B is a mixed gender independent school for 8 to 19 year old pupils, run by Action for Children.
9. This appeal was originally listed for hearing in November 2010 but was adjourned as no provision of place confirmation had been obtained from that school. Shortly prior to this adjourned hearing notice was received from School B indicating that they are not in a position to offer a place for the Child in light of issues raised in their statement.
10. The appellant applied unsuccessfully to the President of the Tribunal to amend their grounds of appeal to seek a mainstream placement. This application was renewed in the face of the tribunal at the hearing.
11. The tribunal in dealing with this appeal may either allow the appeal by amending Part 4 of the statement to reflect parental preference or dismiss the appeal. The tribunal has no jurisdiction to make any directions for any phased re-introduction into mainstream education.

Tribunal's Decision with Reasons

We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submissions given at the hearing.

We have also considered the relevant provisions of the Code of Practice for Wales 2002.

We conclude as follows:

1. This is an appeal against Part 4 only of an amended statement of special educational needs issued in July 2010. In light of the refusal of School B to offer a place for the Child, the appellant applied to amend their grounds of appeal so as to name a mainstream placement for the Child. The parents indicated in evidence that they and the Child want to return to School E. The Child was previously a pupil at this school between December 2007 and June 2008. The Child was removed from the school by their parents and placed at School F. The parents in hindsight acknowledge that their decision to remove from School E was a mistake. Whilst a pupil at School E the Child received one fixed term exclusion.
2. The Parents indicated to the tribunal that the Child is extremely anxious to return to School E. The Child has many friends at this school with whom the Child plays football and mixes socially. The Parent indicated that the Child considers that they miss out on other social activities because the Child is not at the same school as their friends.
3. Regulation 9(2) allows the parents, in exceptional circumstances, to amend a notice of appeal. In this instance the tribunal is content to find that the circumstances are exceptional in that there has been considerable delay since the appeal was issued in July 2010 and confirmation of the refusal of School B to offer a place was only recently received. It is appropriate for this appeal to be dealt with expeditiously and without further adjournment. The LA did not object to the application.
4. Given that the parents now express a preference for a mainstream placement then the LA is obliged to comply with this preference unless it establishes one of the specified grounds of opposition. The onus of proof is therefore placed on the LA. The ground of opposition put forward by the LA in this case is that the Child's attendance at the school would be incompatible with the provision of efficient education for the children with whom the Child would be educated on the basis that their behaviour is such that it would be disruptive for others.
5. Part 2 of the Child's statement of special educational needs begins with the following summary of their needs, functioning and learning difficulties :

“The Child has had a statement of special educational needs, to address their behavioural issues since March 2006. The Child attended at least four mainstream primary schools and has attended four mainstream secondary schools since September 2007. This amendment is to facilitate a change of provision, as a result of the Child’s very recent permanent exclusion to a provision better suited to meeting the Child’s behavioural, emotional and social difficulties. The permanent exclusion has not yet been ratified by the school disciplinary committee”

(In the event the exclusion was overturned on the basis that the Child was to be placed elsewhere)

6. The remainder of Part 2 contains the following descriptions amongst others;
 - “The school reports that the Child is a disruptive influence on the class and their ability to learn is severely hampered by their behaviours.”
 - “However shortly after the admission there were incidents of alleged verbal bullying of the Child by other pupils. There were examples of use of inappropriate sexual language and behaviour by the Child. The Child is said to manipulate situations through use of persistent underhand remarks and actions designed to provoke a violent response, albeit in a verbal or physical manner. The Child uses intimidating verbal and body language to both pupils and staff. The Child is increasingly presenting sexually provocative and demeaning behaviours towards female pupils both in and out of school. The Child has no concept of the idea of personal and private space, which is particularly apparent with female pupils.”
 - “The Child’s presence in and out of the classroom has changed the dynamics of the pupil relationships.”
 - “The Child has a long history of non-compliance and attention seeking behaviour. The Child is unable to accept responsibility for their own actions. The Child’s behaviour in all schools is noted to have a pattern which has become significantly more serious due to physical maturity.”
 - “Between December 2009 and April 2010 the Child has received thirty-one days fixed term exclusions for assaults on pupils, assault on staff, disruption, disobedience, verbal abuse and sexual issues.”
7. The description of the Child’s special educational needs concludes “The LA considers that the Child’s special educational needs arise from significant behavioural, emotional and social difficulties”.
8. The educational provision to meet the needs and objectives set out in Part 3 include :

- “access to an educational environment, with a favourable teacher/pupil ratio, that is well structured and supportive, and where the rules and expectations are clearly taught, recognised and rewarded and consistently applied”
 - “structured opportunities to recognise inappropriate behaviour in relation to female peers”
 - “The Child will be supported to accept that they are responsible for their own behaviours and that their behaviours in a variety of situations are the result of own choices”
 - “Structured planned opportunities for promoting and facilitating appropriate interactions with peers”
 - “High level of pastoral support with a named person with whom the Child can discuss problems”
9. Parts 2 and 3 of the statement are unchallenged and are not the subject of this appeal. The provision made in Part 3 to meet the needs in Part 2 are of a nature that would typically be provided in a special school and not of the type ordinarily made in mainstream schools. It is therefore against that background that the tribunal must decide this appeal.
10. The Child is currently placed at School A. This is a school for boys with emotional and behavioural difficulties. There are fifty six pupils on the roll divided into seven classes of eight pupils. The school is able to offer pupils the prospect of sitting GCSE exams in English, Mathematics, Science, ICT, RE and PE. The tribunal was informed that some pupils do successfully reintegrate into mainstream education.
11. However the tribunal was told by the Head teacher at School A that the Child had not settled well into the school and that the Child was probably one of its most challenging pupils. The Child has received five one day fixed term exclusions and one five day exclusion for threatening and dangerous behaviour. The Head teacher states that the statement remains an accurate description of the Child, and that the Child presents with significant emotional and behavioural difficulties.
12. The Head teacher explained that some of the pupils are given an opportunity to integrate into mainstream provision, but at present no consideration can be given to allowing the Child to do so because the Child has not shown any commitment to modifying behaviour and that the Child would not be able to cope appropriately in a mainstream environment.
13. The Parents state that the Child is desperate to return to School E and they are of the view that the only way that the Child could make

progress is if they were allowed to return to School E, although not necessarily as a full time pupil immediately.

14. However on the basis of the evidence presented to the tribunal and of the description contained in the statement, the tribunal is satisfied that the LA has established that a placement in a mainstream school for the Child would be incompatible with the provision of efficient education for other children. The tribunal sadly has to conclude that there has been no improvement in the Child's behaviour since the issue of the amended statement in July 2010
15. It was explained to the tribunal by the LA Representative that consideration is being given by the LA to providing a bespoke educational programme for the Child which could in time provide the opportunity for the Child to be re-introduced into mainstream education. At present the Child is being provided with a motivational course one day a week and a music based course on two other days a week. These courses are provided out of school. As part of this programme some individual tuition is to be introduced on the other two days, to be held at a neutral venue. The LA Representative explained to the parents that in order for this programme to progress the Child had to commit to the programme and improve the Child's behaviour. The evidence given by the Head teacher, and reflected in the statement is that the Child always promises that they will behave, but that the Child is never able to sustain an improvement for longer than a few days.
16. It was explained to the Parents that the tribunal is unable to make any orders or directions in relation to the LA's proposals, as this appeal relates solely to the naming of a school in Part 4. The tribunal reiterates however that the Child must begin to take responsibility for the Child's actions and that the Child must be encouraged to do so by the Parents. It may also be a useful exercise for the LA to involve School E in any planning to ascertain at an early stage whether or not there can be any prospect in due course of the Child returning to that school. The Child needs to be involved in any discussions and must be made fully aware of the responsibility placed upon them. The Child must realise that any progress with any plan depends entirely upon the Child's commitment to modifying their behaviour.
17. In the circumstances given the finding made above at paragraph 14 and the fact that the placement at School A is currently appropriate and meeting the Child's needs, the appeal is dismissed.

ORDER: Appeal dismissed

Dated February 2011