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Decision

Date of Birth:	1998	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of hearing:	2011	
Persons Present:	The Parents	<i>Parents</i>
	Parents Representative	<i>Solicitor</i>
	Parents Witness	<i>Educational Psychologist</i>
	Parents Witness	<i>Head teacher – School A</i>
	LA Representative	<i>Counsel</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>SENCo – School B</i>

Appeal

The Parents appeal under section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by the Local Authority for their Child.

Preliminary Issues

This appeal was originally listed for hearing in December 2010 but was adjourned to this date.

Supplementary case statements and additional evidence has been filed by the parties. At the hearing the tribunal granted permission for the appellant to file additional evidence in the form of a letter dated February 2011 by a, speech and Language Therapist and a letter of the same date by an Occupational Therapist. It appears that the Occupational Therapist's letter had inadvertently not been served upon the tribunal by the parental representative although the LA was in possession of a copy. The tribunal accepted that the circumstances were exceptional and admitted the letters in evidence under regulation 33(2) and (3) respectively.

The LA applied for the admission of the results of a standardised test undertaken at the beginning of February 2011. This information had not been served upon the Parent or their representative and in the circumstances the application was refused. It was noted however that the SENCo from the school was present and in a position to provide the relevant information as part of their evidence to the tribunal.

The parties had also presented a working document which highlighted some areas of agreement but also revealed that substantial areas were still in issue

between the parties. Unfortunately the various additions and deletions to the working document made it extremely difficult to follow.

Facts

- i. The Child was born in September 1998 and is now twelve years and five months of age. The appellant is the Child's Parent.
- ii. In January 2005 the Local Authority received a request for a statutory assessment from the Child's primary school. This was followed by a parental request for a statutory assessment in February 2005.
- iii. Given that this request was made fairly shortly after the request from the school, the LA deferred the matter for further consideration until after a multi agency meeting scheduled for March 2005.
- iv. Following that multi agency meeting a community paediatrician, wrote to the LA expressing their concerns that the Child may have a diagnosis of ASD and probably Asperger's syndrome. It suggested that the Child was not having the relevant support in class and repeated the request for a formal assessment of the Child's special educational needs. The Paediatrician referred the Child to the Communication Clinic at a local Hospital.
- v. A statutory assessment commenced in May 2005 and concluded in July 2005, which lead to the issue of a statement of special educational needs in August 2005. This statement provided for 5 hours of additional support for the Child within their mainstream setting.
- vi. During an annual review meeting in April 2006 concerns were raised about the Child's progress and their impending transfer to primary school, with the result that the level of support was increased to 10 hours per week.
- vii. At the annual review held in June 2007 at School C it was considered that the 10 hours additional support provided for the Child was still insufficient and a request was again made by the school for additional support.
- viii. The Child was reviewed by a Consultant paediatrician in September 2007, who reports " It is my impression having read the observations and extensive reports from others that the Child does fulfil the criteria for Autistic Spectrum Disorder without general difficulties and specific language difficulties"
- ix. The Child's case was not fully considered by the LA's Special Educational Needs Panel until its meeting in January 2008, when it was agreed to increase the level of support for the Child from 10 hours to 16 hours. Consequential amendments were also made to Parts 2 and 3 of the Child's statement to recognise this increase in provision.
- x. The school and the Parents continued to maintain that the Child required full time one-to-one support and several reviews were undertaken by the school in an effort to persuade the LA to grant additional support. Indeed it

is clear from correspondence that relations between the school and the LA were strained to say the least.

- xi. In November 2009 the school again wrote to the LA expressing dissatisfaction and requesting further funding to support the Child. The LA in response arranged for a psychological assessment in order to consider the nature of the support that would be required to support the Child's transition to secondary education in September 2010. At that stage a placement either at School D or School B was under consideration.
- xii. The Special Educational Needs Panel considered the psychological assessment in February 2010 and reiterated its view that 16 hours support per week was appropriate for the Child. The panel supported a placement for the Child at School B which at that time reflected parental preference.
- xiii. In March 2010 an amended statement of special educational needs was issued with Part 4 indicating a placement at a mainstream comprehensive school.
- xiv. The Parent gave notice of their intention to appeal against the statement of special educational needs in May 2010 as they were seeking a specialist school placement for the Child.
- xv. In September 2010, pending the hearing of the appeal the Child commenced as a year 7 pupil at School B. In November 2010 an amended statement of special educational needs was issued naming School B as the placement in Part 4.
- xvi. The Parent now appeals against Part 2, 3 and 4 of the amended statement of special educational needs, in particular seeking a specialist placement for the Child at School A.
- xvii. School A specialises in supporting boys and girls whose education has been adversely affected by dyslexia, dyspraxia and dyscalculia. The school is registered with the Department for Children, Schools and Families and with the Council for the Registration of Schools Teaching Dyslexic pupils (CReSTeD) under the "special provision" category.
- xviii. The Welsh Ministers have given consent for the Child to attend School A under section 347 (5)(b) of the Education Act 1996 and it is confirmed by the school that there is a place available for the Child from May 2011.
- xix. The tribunal has power to allow the appeal by making amendments to any or each part of the statement or to dismiss the appeal if it is found that no amendments are required to the statement.

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, and also the written submissions and closing arguments presented by the representatives following the hearing.

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

We conclude as follows:

1. The issues specifically addressed by the tribunal during the hearing were:
 - (i) The Child's current progress and the provision made for them at School B
 - (ii) Speech and language therapy
 - (iii) Occupational therapy
 - (iv) School A
 - (v) Costs

The tribunal was not able to conclude the evidence in relation to costs on the day of the hearing and additional information was provided by both parties in their written submissions. The tribunal is grateful to both advocates for their comprehensive written submissions which have been carefully considered.

2. The LA told the tribunal that the Child has settled at School B and is well integrated into the school. The Child is a year 7 pupil and is placed in a small learning group, with the group numbers ranging from seven to fifteen students for the majority of the lessons. This small group system is flexible and is taught in parallel with the mainstream peers. The Child has some lessons such as music, art, PHSE, DT and PE in a larger class. The Child has one-to-one support for all lessons. The evidence shows that the Child is supported for the majority of the time although a Welsh speaking teaching assistant supports the Child during Welsh lessons. Three other pupils in the Child's small group have a statement of special educational needs. One is placed at School Action Plus and the remainder at School Action. The Child in addition receives five hours per fortnight of extra literacy support. The Child has a good relationship with their support teacher. For much of the time during lessons the support is sat next to the Child in order to keep the Child on task. The Child is also assisted in copying from the board. The Child follows a similar curriculum to the class but their work is differentiated to the extent that not so much literacy is involved
3. The SENCo at School B also teaches science to the Child. The SENCo commented that the main issue of concern at the Child's primary school was the Child's behaviour. As the Child's behaviour has now greatly improved the focus is on literacy. The SENCo reported to the tribunal that the Child has been tested using the WRAT on three occasions at School B. The test was first administered in October 2010 when the Child managed 15 out of 160 high frequency words. A second test was administered in November when the Child managed a 100 out of 160 high frequency words and a third test in February when the Child read all one hundred and sixty words. The SENCo also indicated that the Child's spelling had shown a similar rate of progress. The SENCo described the results as showing a huge rate of progress. The SENCo also related from their own experience with the Child in science classes that the Child could

now read words that before were too difficult. Indeed they described the Child's progress as 'unbelievable'.

4. The LA's Educational Psychologist has known the Child since primary school and also felt that the Child has settled well into the school and has formed friendships with peers. The Child is described as popular with peers and extremely sociable. The Child has also said that they are happy at School B and does not wish to move schools.
5. Although not specifically written into the Child's present statement, the Child also receives one hour per week of SpLD tuition from a specialist teacher, although this provision is apparently only intended to remain in place for twenty weeks. The Child also undertakes paired reading for 15 minutes twice a week
6. The SENCo and LA's Educational Psychologist both consider that the Child requires full time one-to-one support. However they also state that such provision is always subject to review and if the Child makes sufficient progress to be able to work independently then the support can gradually be decreased in a manner that is commensurate with the Child's needs. There is no specific timetable or plan in place for the reduction in one-to-one support. This level of support can continue into years 8 and 9 if necessary.
7. The Parent does not share the view of the school and does not consider that there had been a dramatic improvement in the Child's behaviour. The Parent acknowledges that the Child has adjusted to the change but they had expected the Child to make more progress. The Parent believes that the Child continues to struggle and finds it hard to watch the Child struggle.
8. The Child does not get a great deal of homework. The Child generally completes homework with assistance during the lunch break. However the Parent indicated that a week before the appeal hearing the Child had brought English homework home and that it was a considerable effort for the Child to complete the work; indeed the Parent felt that the Child was barely able to complete any of the homework themselves and that the Child found it difficult to break down the words even though they were on the page. The Parent said that they had assisted the Child to such an extent that they completed most of the homework for the Child.
9. When asked by the parental representative, the SENCo confirmed that in their opinion the Child needed to be in small classes at all times and agreed that the Child would struggle in a larger class. The SENCo further acknowledged that in the Child's science group there were no other children who had a diagnosis of dyslexia or specific learning difficulties apart from the Child. The SENCo also acknowledged that there was no embedding of a specialist dyslexic type programme throughout the curriculum. A specialist teacher visits the school once a week to advise on the issues but that does not necessarily provide programmes. The teaching assistant follows a standardised programme and not a programme specifically tailored to meet the Child's needs.

10. Whilst stressing the improvement in the Child's attention levels and progress, the SENCo acknowledged that the Child should also have access to a social communication group. The Child doesn't at present access such a group but there is a possibility of the Child accessing such a group for a six week period.
11. The LA were challenged by the parental representative that the WRAT test had been repeated too frequently and that the results of the tests which in the SENCO's words 'showed incredible progress' could not be relied upon. The tribunal accepts that frequent repetition of tests at less than six monthly intervals does lead to flawed results. Caution must therefore be exercised in interpreting the results. However the overall impression gained by the tribunal is that since the Child's transfer to comprehensive school the Child's behaviour has improved and that the Child has made academic progress. The Child is of low average cognitive ability. There is also some corroborative evidence which supports the test results. The SENCo gave evidence of the Child's progress in the science lessons. The appellant argues that despite receiving one-to-one support in primary school the Child failed to make progress and that the present level of support is simply more of the same. However whilst at primary school the Child was placed in a large mainstream class and the focus appears to have been on managing behaviour. At School B the Child is placed in a relatively small group and the focus has shifted to developing literacy skills and as a result some progress is being made.
12. It is noted however that the Child is not receiving additional support for numeracy and the specialist teacher support is only currently scheduled to last for twenty weeks.
13. The Parents Educational Psychologist takes the view that School B cannot meet the Child's needs. They believe that it is inappropriate for the Child to receive one-to-one support for all their lessons and that the school itself is unable to provide appropriate differentiation of the work for the Child. The Educational Psychologist does not consider that one hour per week of SpLD teaching is enough, especially as the programme is not embedded properly into the curriculum. They are of the view that the important factor is that the Child should be taught by specialist dyslexic teachers who are able to differentiate the curriculum in a manner that will enable the Child to build their self confidence and independence. They are critical of the current arrangement whereby the Child's teaching assistant remains seated by the Child's side for most lessons.
14. Clearly it is not ideal for the Child to be reliant on teaching assistants in this manner and a clear plan needs to be formulated to reduce the level of this support if the Child is to have the opportunity to gain self confidence and be able to function independently. It has been shown however that since moving from primary school there has been a great improvement in the Child's behaviour, the Child is relating well to peers, has formed some friendships and is far more focused on their work. The evidence shows that the Child is making progress and therefore the tribunal finds that School B is presently meeting the Child's needs.

15. In terms of speech and language therapy, the tribunal did not hear any live evidence. It was presented with a report dated November 2010, supplemented by a letter dated February 2011 and a report dated December 2010 from a Speech and Language Therapist commissioned by the LA.
16. A Speech and Language Therapist assessed the Child at school in September 2010 when they were accompanied by an Occupational Therapist who undertook assessment on the same day. The Speech and Language Therapist considers that the Child has specific receptive and expressive language difficulties. They believe that “these are associated with the Child’s complex special educational needs which arise from average intellectual ability, severe specific learning difficulties and a diagnosis of high functioning autism”. Their recommendations are that the Child requires one forty-minute session per week of direct speech and language therapy, delivered by a Speech and Language Therapist, for a minimum of the next academic year. They further consider that the Child urgently requires access to a social communication group under the auspices of a Speech and Language Therapist or a specialist teacher on a twice-weekly basis for thirty to forty minutes.
17. On behalf of the LA it was concluded that “overall the Child has very good language skills, both in assessment and in general functional conversations. Assessment does highlight some mild problems in their understanding of language. The Child also requires some modelling and guidance on how to be an effective talker when the Child’s rate becomes too fast.”
18. They recommend, “During daily activities at school, effort should be given to check understanding of key vocabulary and topics covered. New vocabulary should be explored and linked with other words similar in meaning. Particularly during science and maths, the Child’s understanding of concepts relating to time, location and sequencing should be developed”.

It was also suggested that teachers should “explain the importance of being a good speaker and what a listener may need. A model of slow rated talking with lots of time for pauses when talking to the Child in a one-to-one setting. Encourage the Child to use steady talking”

The Child’s skills with “word classes” and “semantic relationships” should be reassessed in six months time by a qualified Speech and Language Therapist. This should be sufficient time to bring all the Child’s skills up to appropriate levels.

“Speech and language targets should be incorporated into the Child’s individual educational plan”.

The working document provided by the parties shows that the Parent adopts the recommendations of the Therapists in full. The LA acknowledges that speech and language therapy is an educational need that ought to be incorporated in Part 3 of the statement, but go no further than the recommendations contained in the report.

19. The Speech and Language Therapist suggests in their letter dated February 2011 addressed to the parental representative that the most significant fact in the difference between the results obtained by both therapists is that the Occupational Therapist administered their assessment over three different sessions whilst a Speech and Language Therapist, did so during one session. It was concluded that in their view the assessment results that they had obtained were more representative of the Child's functional level of language within the school environment.
20. The LA Representative in their closing submission draws the tribunal's attention to the general advice given to the Child's teachers by Educational Psychologists who have reported over time that the Child requires their work to be broken down into manageable chunks with short breaks and rewards for positive behaviour in order to obtain optimum performance. This is reflected in particular in the report of the Educational Psychologists dated February 2010. It is also the case that the Child can have a short attention span. It is also a significant factor that the Child was assessed very early in the school term when the Child had only been at school for about a week. The tribunal takes the view that the testing process was approached in a manner that was more sympathetic and suitable to the Child's needs. The degree of complexity is not acute and the model proposed by teaching support is appropriate in a secondary school setting
21. The tribunal however also notes that it was acknowledged that the Child requires access to a social communication group and that is a provision that will be written into the Child's statement. For the reasons set out above the tribunal prefers the evidence of the teaching support in relation to the Child's speech and language therapy needs and adopts the recommendations made supplemented by access to a social communication group.
22. The tribunal further concludes that the specialist teaching currently in place should continue but there seems to be no reason for it to be restricted to twenty weeks a year. The appellant's solicitor argue that there is no evidence to suggest why an hour a week is appropriate but given the finding made by the tribunal in relation to the Child's progress, it is considered appropriate for such provision to continue as currently provided and not cease after 20 weeks.
23. The position in relation to occupational therapy is similar in that the tribunal heard no live evidence. The tribunal is urged by the appellant to accept the recommendations contained in the report of the Occupational Therapist dated November 2010 and supplemented by a letter dated February 2011. The LA for its part proposes the recommendations of another Occupational Therapist report dated December 2010. The Occupational Therapist has also reiterated their findings assessment in a letter to the parental representative dated January 2011.
24. The tribunal considers that it can often be a useful exercise to raise supplemental questions of experts and very often the replies can lead to clarification of issues and the narrowing of differences. However the tribunal takes the view that such practice needs to be undertaken in a

regulated manner with the questions being raised in a letter that is jointly prepared and agreed between the parties.

25. The Occupational Therapist in summary concludes that “the Child is clearly struggling in developing their gross and fine motor skills. Of particular concern were the Child’s difficulties with motor planning and forward sequencing and their difficulties in processing and integrating vestibular proprioceptive, kinaesthetic and tactile sensory feedback”. They specify that the Child requires direct occupational therapy for a forty minute session a week with indirect occupational therapy for thirty minutes per week. The Occupational Therapist also prescribes a programme for a teaching assistant to provide assistance within the classroom for thirty minutes per day.
26. The Occupational Therapist was commissioned by the LA to assess the Child and they also highlight some difficulties and recommend a sensory diet to enable greater attendance and concentration in lessons. They recommend direct occupational therapy initially to set up the programme which they consider could then be continued by a support worker. The LA adopts the recommendations for inclusion in Part 3 of the statement. This includes 4 x 2 hour sessions provided by the Occupational Therapist to establish a sensory diet and train staff working with the Child, 3 x 2 hour sessions to establish a programme of physical intervention and to train support staff, 2 x 30 minute sessions per week to implement the motor programme by the support staff. In addition there will be on-going monitoring by the Occupational Therapist amounting to three hours per half term to update the sensory and motor programmes and to re-assess the Child.
27. The Occupational Therapist was invited by the parental representative to consider the recommendations and a response is contained in the letter dated February 2011 admitted as late evidence. The Occupational Therapist states that they agree with the conclusions generally, but that they consider that their recommendations are more appropriate for the Child’s needs. It was also considered an important factor that the Occupational Therapist has observed the Child in the classroom. The assessment was carried out at school but it is unclear whether or not they observed the Child in the classroom
28. In terms of the practical evidence it was noted by the SENCo that whilst the Child’s handwriting is not brilliant, it is legible and whilst the Child cannot write at length the Child is able to write a page. The SENCo also noted that the Child is able to manipulate apparatus in the science lesson and that practically in class has no apparent difficulties. It was noted by way of example that the Child is able to pour liquid into a test tube. The LA Educational Psychologist also stated that the Child has no difficulty walking around school with their bag.
29. The Parent indicated however that the Child tends to walk into things and as an example indicated that the Child recently hit the bridge of their nose on the corner of the dining room table. This was, the Parent conceded, a one off incident. A recent eye test indicated that the Child does have a problem with peripheral vision.

30. In all the circumstances and on the basis of the practical evidence provided from the school, whilst accepting that occupational therapy is an educational need for the Child, the recommendations are considered to be disproportionate. It is necessary to balance the Child's access to the curriculum with need for withdrawal for individual work and the tribunal considers that it is far more important for strategies to be incorporated within lessons. The nature of the programme proposed by the teaching support is more proportionate to the level of difficulty identified and is far more appropriate for implementation in a secondary school setting.
31. The Head teacher at School A gave details regarding the school. School A is a specialist day and boarding school which provides education for pupils with specific learning difficulties including dyslexia, dyspraxia and dyscalculia. The school is located on two sites which are roughly five miles apart. The preparatory school for year 7 and 8 pupils is on one site and on the other site is the senior school for year 9 and above. There are one hundred and fifty four pupils at the school, almost half of whom have statements of special educational needs and one third of whom attend as day pupils.
32. At present there are sixteen children in year 7 and they are divided into two classes of eight. Another child is expected to join the school shortly which will result in the formation of three classes for English and Maths. The head teacher of School A confirmed that all the staff at the School have additional qualifications and experience and training in relation to dyslexic pupils.
33. There are five Speech and Language Therapists on site providing support to both campuses, which equates to 3.5 of a full time equivalent. There are four Occupational Therapists equating to 2.5 full time equivalents. Half the children at School A receive speech and language therapy or occupational therapy support each week.
34. The Head Teacher of School A stated that no teaching assistant support is provided within the classroom and does not foresee that the Child will require one-to-one support in the class. The Head Teacher indicated that the Child will receive direct teaching from a class teacher who will be adept at keeping the pupils on track. They stated that they have considered the papers and that the Child had been observed in the classroom by colleagues over a two day period and that they were therefore confident that the Child wouldn't struggle in the classroom and that would be supported in terms of the Child's learning style. The Head Teacher stressed that the Child will be in a class of children of similar difficulties. The Child would be withdrawn from lessons for all therapy and this aspect would be looked at each half term to ensure that the Child didn't miss the same subject on each occasion. Homework is done at the end of the school day during prep time.
35. The Child has already spent three nights and two days at the school. The Parent commented that the Child enjoyed their time at the school and that the Child had phoned them at the end of the first day to state how much the Child had enjoyed themselves. The Parent acknowledged that the Child

was anxious about the proposed placement but felt that the Child could deal with the upheaval of becoming a weekly boarder. The Parent explained to the tribunal that they did not seek a residential placement but that they did not consider that there was any other appropriate placement within daily travelling distance of the family home. The Head Teacher commented that the Child responded very well during the three day assessment and that there were no concerns about the Child's behaviour or their ability to cope within the school environment. The Child was described by the house tutor as polite and amenable. The Head Teacher confirmed that a place would be available from the start of the summer term in May. The cost of a placement according to the Head Teacher is £18,360.00 per annum.

36. No specific timetable has been worked out for the Child as yet but the Head Teacher acknowledged that there would have to be some negotiation and discussion in the event of the Child having to be withdrawn for therapeutic support. The Head Teacher was extremely confident that the Child wouldn't struggle at the school and that there would be pastoral and other support available to the Child if necessary. The Child's behaviour was not considered to be a problem.
37. The LA does not accept that School A is an appropriate placement and further does not accept that the school can meet the Child's needs. In particular the LA highlights that there will be no one-to-one support. The Head Teacher of School A was pressed by the LA's representative in relation to a contingency in the event that the Child was unable to cope without support. The Head Teacher remained of the view that the Child will not require support and that the class teacher can provide such support as may be required especially with literacy and numeracy. The response of the school may suggest that this is a case of the child fitting in with the system rather than the system adapting to meet the child's needs. There was however a concession by the Head Teacher that if it became essential then one-to-one support could be arranged although normally one-to-one support was only available from year 9 upwards.
38. Whilst the LA argues that the Child is unable at present to cope without support in relatively small to medium sized classes within a mainstream school, the situation in School A will be different. It is a specialist school with smaller classes not exceeding 8 in number with teachers experienced and qualified in teaching children with dyslexia and associated difficulties. The Child also has a diagnosis of autistic spectrum disorder but it is generally agreed that their dyslexia presents the greatest barrier to the Child's learning. The Parent Representative in their submissions highlights the recommendation of their Educational Psychologist that the Child must be taught with cognitively able peers. They take the view that School B is unable to provide the appropriate differentiation that the Child needs and that it is unhealthy for them to be supported throughout by a teaching assistant. The Educational Psychologist states that this arrangement does not assist the Child to build self confidence and to develop independence. Their view is that School B is therefore not able to meet the Child's needs. They believe that the Child can only make progress at secondary school if the Child attends a specialist provision. It was however highlighted when the Educational Psychologist was questioned by Counsel for the LA that

they had not visited School A and the Educational Psychologist acknowledged that their information regarding the school was derived from the papers and from speaking to the Head Teacher. The LA therefore submits that little reliance can be placed upon the Educational Psychologist's recommendations in terms of placement. The tribunal accepts the LA's argument on this issue. However, the Educational Psychologist did assess the Child and observed them in a classroom setting in School B. The Educational Psychologist is in a position to consider whether or not School B is meeting the Child's needs and also to make recommendations as to the type of provision that they consider the Child now requires. The tribunal, for the reasons set out above, has found that School B is currently capable of meeting the Child's needs and therefore does not accept the Educational Psychologist's contentions on this issue.

39. However, it is not necessarily the case that the Child's special educational needs can only be met in the manner currently provided by School B. Whilst the tribunal concludes that the Educational Psychologist is not in a position to make a recommendation for a placement at School A, they are able to make recommendations as to the type of placement that they consider appropriate. In this situation it is for a special school setting with small classes, without one to one support and where the curriculum is appropriately differentiated. The LA argues that the lack of one to one support is crucial. However the proposed placement is a specialist school with qualified and experienced teachers dealing with small classes. In addition the Child will be placed with pupils with similar difficulties who are not of a dissimilar cognitive ability. The LA also suggests that School A do not accept pupils with behavioural difficulties. The evidence shows that there had been a great improvement in the Child's behaviour to the extent that the focus of the support has moved away from behavioural issues to focus on literacy issues. There was also the evidence of how the Child coped on their visit to the school and the Child's demeanour generally when at the school. It is accepted that the Child has received one-to-one support at their primary school and on a full time basis at School B, but equally the tribunal accepts that such a teaching model is not sustainable over a prolonged period in a secondary school as it does not allow the Child to develop any independence or to gain in self confidence which ultimately will be detrimental to their education. The tribunal accepts the evidence given in relation to School A, namely that the class structure and the direct teaching should enable the Child to prosper. The tribunal therefore concludes that School A can meet the Child's special educational needs.
40. Given the findings of the tribunal in relation to both schools then as identified by the Parent Representative in their submission, section 9 Education Act 1996 is engaged, namely that the tribunal must have regard to parental preference. In doing so we must consider whether a placement at School A will be an unreasonable use of public expenditure. We have been provided with cost details by both parties although there is some disagreement on the figures presented.
41. The LA suggests that the cost of a placement at School B is as follows:

Teaching Assistant (including yearly on costs)	£14,401.00
SpLD Support	£595.70
Transport	£475.00
AWPU	£2707.60
SALT	£315.00
OT	£1715.00
Total with Travel	£17,501.17
Total without Travel	£17,206.17

42. The Parent Representative invites the tribunal to adopt different figures. It suggests the sum of £17,855 as the cost of a full time teaching assistant as they are employed on an annual basis. However the tribunal accepts the LA's calculation as a teaching assistant's salary is normally calculated on the basis of the time worked. The LA has therefore adopted the correct approach in calculating this figure. The tribunal therefore adopts the sum of £14,401 as the cost of a full time Teaching Assistant to include the on costs of £2,816.
43. The LA states that the AWPU is £2,707.60. The Parent Representative argues for a higher figure of £5,057.00 on the basis of information contained in a document issued by the Statistical Directorate for the Welsh Assembly Government. The Parent Representative appends this document to their submission. This amounts to the introduction of new evidence that cannot be admitted at this stage. For the tribunal to be able to consider this document it should have been included in the case statement or an application made for its admission as late evidence. The tribunal in any event accepts that the LA has presented a correct figure for its own authority.
44. The LA gives a figure of £595.70 as the annual cost for SpLD support on the basis of an hourly rate of £15.67. The Appellant suggests that the annual figure should be £1,191.40. The tribunal considers this figure to be extremely low. The SpLD teacher may only work for 50% of the time but the hourly cost of the teacher's time is not halved and the hourly rate provided is totally unrealistic for the time of the specialist teacher. The annual salary quoted of £24,079 should be increased by 20% to take into account the on-costs thus making an annual total of £28, 894. As an expert tribunal we consider that we are able to identify an approximate cost. The tribunal considers that a figure of £1500.00 - £2000.00 is far more realistic for the provision of specialist teacher support for one hour a week over 38 weeks.
45. An hourly rate of £63 is provided for the Speech and Language Therapist. The LA's written submission suggests that this figure includes administration and travel. Presumably it is intended to state that administration and travel are charged at the same rate. As the tribunal has adopted the provision proposed by the LA, then the total of £315.00 is accepted.
46. The hourly rate for the Occupational Therapist is £70 plus travel of £35 per hour. The LA in its calculation suggests that 2 hours of an Occupational Therapist's time is required. However the recommendations amount to 32

hours work per annum by an Occupational Therapist. This therefore makes a total of £2,240.00. The travel cost, assuming an hour to travel on around 15 occasions, makes a total of £525.00. The total cost of the Occupational Therapist amounts to £2,765.00

47. Given that the parents have indicated that they will not undertake the transporting if the Child attends School B, the cost of a bus pass amounts to £475. Issues were raised at the hearing about the suitability of allowing the Child to travel unescorted by bus. This aspect was not explored fully and for the purposes of this calculation the cost of the bus pass is adopted.
48. The tribunal therefore calculates that the total cost for attending School B to be as follows:

Teaching Assistant	£14,401.00
SpLD Support	£1500.00
Transport	£475.00
AWPU	£2707.60
SALT	£315.00
OT	£2765.00
Total	£22163.60

49. There is again some disagreement between the parties in relation to School A. The LA suggests that the cost for an academic year amounts to £19,341. The figure given by the Head Teacher is £18,360. There is an additional registration fee of £120 and an administration fee of £92 per term. The basic cost according to the Appellant is therefore £18,756 as against the LA figure of £19,737. The tribunal accepts the evidence given by the Head Teacher.
50. The LA argues that transport costs will amount to between £8,740 and £11,780 per annum. The parents however have indicated that they will be responsible for the cost of travel. This figure can therefore be disregarded from the calculation.
51. The on-site therapy cost of a Speech and Language Therapist and an Occupational Therapist is £456.00 per term for one session a week. This figure equates roughly to a rate of £38.00 per session. Both parties suggest a figure of £5,292 per annum as a total cost for the additional therapies. This figure however is based on the level of provision sought by the parents. On the basis of the tribunal's findings the actual costs of the therapists will be less. The speech and language provision does not exceed one session per week per term making a total £1368.00 per annum. The occupational therapy provision is likely to equate to two sessions per week in the first term which we are told will attract a cost of £882 and one session per week for the other two terms amounting to £912. The total occupational therapy costs will be £2280.
52. The tribunal, accordingly totals the cost of a placement at School A to be £22,404.00. This compares to a cost of £22,163.60 for School B. There is virtually parity between the costs for both placements. On the basis of the

above calculations and on the basis that the parents will bear the transport costs to School A, it cannot be considered that a placement at School A amounts to an unreasonable use of public expenditure.

53. The tribunal was invited by the parties to consider the appropriate wording for Part 2 of the statement on the basis of the alternative wording presented by the parties in the working document. The tribunal has carefully considered all the available evidence and on the basis of the findings made in this decision an amended version of Part 2 is appended hereto. The tribunal has formulated Part 2 in a manner which it considers best reflects the evidence presented and the findings made. The tribunal does not accept that the Parent should be bound by decisions made at an annual review shortly before the appeal hearing. The Parent was unrepresented at that meeting with four officers of the LA present. It was known that an appeal was pending and that the Parent was represented by solicitors in relation to the appeal.
54. Parts 2 and 3 of the statement will therefore be amended to reflect the findings of this tribunal. As parental preference prevails, Part 4 of the statement is amended to name School A, such placement being conditional upon the parents bearing the costs of transport.

ORDER: Appeal Allowed

Dated March 2011