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## **DECISION**

Date of Birth:	1994	
Appeal of:	The Parents	
Type of Appeal:	Against the contents of a statement of SEN	
Against Decision:	The Local Authority	
Date of hearing:	2011	
Persons Present:	The Parent	<i>Parent</i>
	The Parent	<i>Parent</i>
	The Parent's Representative	<i>Counsel</i>
	The Parent's Witness	<i>Principal MSI consultant</i>
	The Parent's Witness	<i>Deputy Head School C</i>
	The Local Authority Representative	<i>Counsel</i>
	The Local Authority Witness	<i>Deputy Head School B</i>
	The Local Authority Witness	<i>Advisory Teacher</i>

### **Appeal**

1. 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 (LA) for their Child.

### **Preliminary Issues**

2. The LA made two preliminary applications. The first was to allow the LA's statementing officer, to attend the hearing as an observer. As the parents did not object, the application was allowed pursuant to rule 30(3). The second application was for permission to allow the attendance of an Educational Psychologist as a third witness. The Educational Psychologist had originally been named as a witness by the LA but was subsequently replaced by the Advisory Teacher who was present at the hearing. This application was made on the basis that the parents had filed late evidence from an educational psychologist, and that the LA Educational Psychologist could be of assistance to the tribunal in interpreting this report. This application was refused. Permission to allow a third witness is only normally given in exceptional circumstances. In this case there was written evidence from an educational psychologist for both parties and the tribunal is well placed to interpret and evaluate such evidence.

3. The parents applied to admit a report dated November 2011 by an Educational Psychologist. This report was served upon the tribunal and the LA in November 2011. The criteria in regulation 33(2) were satisfied and the LA did not oppose the application. The tribunal was satisfied that the admission of the report in evidence would not be contrary to the interests of justice and accordingly allowed the application.
4. The hearing of the evidence in this appeal took a full day. It was agreed that each party should provide written closing submissions. The LA had not provided comprehensive details of costs at the hearing and although costs information had been provided to the parents a few days before the hearing, the Parent Representative requested and was granted the opportunity to raise questions of the LA in relation to the costs quoted. A direction was made for the parents to send to the LA within two days of the hearing a request for further information on the issue of costs. The LA was directed to respond by mid December and also to file closing submissions by the same date. The parents were directed to file and serve a closing submission on or before the end of December 2011. These directions were complied with by the parties and the tribunal panel reconvened in early January 2012 to consider the evidence and to formulate this decision.

### **Facts**

5. The Child was born in October 1994 and is now seventeen years and three months of age. The appellants are the Parents. The Child has complex health and other needs. The Child has a diagnosis of CINCA syndrome (chronic infantile neurological cutaneous and articular syndrome), which affects the Child's skin, joints and central nervous system. The Child also has hydrocephalus which is treated with a shunt; the Child has visual impairment and profound hearing loss. The Child has been fitted with a cochlear implant on one side which has greatly improved her hearing and speech.
6. The Child has always attended a mainstream school. Until July 2011 the Child attended School A.
7. The Child first had the benefit of a statement end of October 1998. The statement has been amended periodically since then leading to the issue of the statement under appeal in June 2011. In that statement the local authority names School B as a placement from September 2011.
8. The Parents issued their appeal against parts 2, 3 and 4 of the statement in August 2011.
9. School B is a local authority maintained special school. The school caters for pupils aged between three and nineteen years with a wide

range of learning difficulties. All pupils have statement of special educational needs.

10. The parents seek a placement at School C. This is a non maintained special school. There is confirmation in the bundle that there is a place available for the Child at this school. The school is approved by the Welsh Government pursuant to sections 342 of the Education Act as a school for children with visual impairment aged three to nineteen of mixed gender.

### **Tribunal's Decision with Reasons**

11. We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and all the oral evidence and submissions given at the hearing, including the closing written submissions of the representatives. We have also considered the relevant provisions of the Code of Practice for Wales 2002. We conclude as follows.
12. The parties produced a working document showing a measure of agreement between them in relation to parts 2 and 3 of the statement. In essence this appeal is about the naming of an appropriate placement in part 4 of the statement.
13. Part 2 of the working document provides a comprehensive description of the Child's needs. The Child has a complex array of medical needs as highlighted above. These include chronic infantile neurological cutaneous articular syndrome, hydrocephalus, chronic inflammation of the left hip, visual impairment, hearing impairment and small stature.
14. The Child's medical difficulties contribute to her complex special educational needs identified as physical, medical and sensory needs
  - Cognition and learning - general learning difficulties
  - Communication and interaction
  - Speech and language delay
15. One issue between the parties in relation to part 2 of the statement is highlighted at page 4 of the working document. The LA objects to the use of certain words of emphasis in this paragraph when describing the Child's visual impairment. The LA argues that the inclusion of these words suggest that the Child's visual difficulties are presented as a greater need than the others. The LA argues that there is no "lead need". It is accepted by the Appellants that it is not possible, and that neither is it appropriate to suggest that some needs are more predominant than others. For that reason the tribunal accepts the argument of the Respondents that the words of emphasis in paragraph 2 on page 4 of the working document are not required, as they tend to suggest that the Child's visual impairment has greater implications than the Child's other needs. The words "considerable", "significant" and

“especially” will be deleted together with the word “important” in a subsequent paragraph. By deleting these words more balance is introduced into the description of needs.

16. The LA proposes that the following additional wording should be incorporated in part 2 namely that “The Child’s needs should be seen as a whole including their learning difficulties, sensory impairment and medical conditions”. The tribunal considers this to be an apt summary of the interpretation of the Child’s special educational needs and that it would be appropriate for this sentence to appear as an introduction to part 2 as it will assist in placing the description of the Child’s needs in context. These words also reflect the case presented by the Parents.
17. A sentence on page 6 under the heading “Language & Communication Skills” referring to having access to a peer group is in issue. The tribunal believes that this sentence is a description of provision and that it is appropriate for it to be deleted from part 2.
18. Subject to the above, the tribunal adopts the revised version of part 2 of the statement contained in the working document and is satisfied that this revised version represents a comprehensive description of all of the Child’s special educational needs.
19. Part 3 of the statement was also agreed to a great extent. It is common ground that the Child requires provision to meet their sensory impairment. The LA argues that a short concise paragraph as contained in the working document sets out a package of provisions to meet the Child’s sensory needs. The LA extends this proposed provision in its closing submissions. The LA’s proposal includes provision from the MSI Service, Visual Impairment and Hearing Impairment Service. The additional wording proposed in the closing submissions provides for further quantification and specification of this provision (as requested by the Appellants).
20. The Advisory teacher for multisensory impairment gave evidence to the tribunal. This evidence supplements their report at pages 72 – 73 of the bundle. The Advisory Teacher saw the Child on a weekly basis as part of the MSI outreach service support programme. The Advisory Teacher last saw the Child in July 2011. The Advisory Teacher’s report was prepared in or around April 2011 as part of the Child’s transition review. The Advisory Teacher views their role as assessing the Child’s vision and hearing and providing advice and adaptation of the curriculum and assessing the progress made. The Advisory Teacher was involved with the Child over a two year period, working individually with the Child and also liaising with the Child’s teaching assistant. The Advisory Teacher indicates that the Child uses their vision and hearing well. The Child’s functional vision skills appear good however “generally when moving around the Child tends to focus directly in front and has little awareness of things around them – this is as a result of

the Child's combined sensory difficulties as well as their cognitive awareness". The Advisory Teacher confirms that the Child didn't require modification to access their computer. The Advisory Teacher reiterated that a cochlear implant had a profound positive impact upon the Child's ability to access language and speech. The Advisory Teacher described the Child as a very oral child, who likes to engage in conversation. The Advisory Teacher confirmed that the Child's functional hearing is good but the Child's understanding of language is at a lower level. The Advisory Teacher reported that the Child was able to move around the building but that the Child tends to lose visual awareness when also talking.

21. The Advisory Teacher confirmed that the Sensory Service used the Natsipsersen as an assessment tool to determine the appropriate level of support for the Child. The provision that the LA now proposes for the Child is based on this assessment tool.
22. The Parents seek provision based upon the recommendations contained in the report dated October 2011 of the Principal MSI consultant for SENSE Cymru. These recommendations are replicated in the wording proposed by the parents as being appropriate to meet the Child's sensory needs.
23. It is common ground that the Child requires provision to address their dual sensory impairment in the form of a service from a teacher of the deaf, a teacher of visually impaired children and a Multi Sensory Impairment teacher. In addition the parents seek a mobility programme implemented and monitored by a mobility specialist.
24. The LA argued that the provision set out in paragraph 5 in the working document maps the appropriate provision to meet the Child's sensory needs. The LA's closing submissions expands on this provision by providing quantification of the provision and including the service of a mobility officer.
25. The provision in part 3 must of course address the needs identified in part 2. The LA argues that the parents proposed wording places excessive emphasis on the sensory impairment rather than addressing all her needs including her learning difficulties. The tribunal accepts this argument on the basis that it is agreed in part 2 that there is no predominant need and that the various needs each impact upon the other.
26. The LA proposes that the MSI sensory service continues to provide a service for an hour a week. The parents following the recommendations of the MSI consultant argue that fortnightly visits are appropriate. The MSI consultant's view is that as the Child will receive a service from the teacher for the deaf and from the visual impaired teacher on a weekly basis then the role of the MSI teacher will be to

bring together a holistic view of the specialist teaching and that as such fortnightly visits are appropriate.

27. The Child is registered as partially sighted. The Child wears glasses at all times to correct their vision. The Advisory Teacher records in her evidence that her functional visual skills appear good and that she uses her vision well. The Advisory Teacher further comments that the Child is able to access all areas of the school without difficulty as well as accessing print and visual pictures. It is recorded by the Sensory Service and by Advisory Teacher that the Child should use font size 14 as a minimum print size.
28. The MSI consultant proposes that the Child should receive weekly visits from the teacher for the visually impaired – to access the new school environment and advise on any modification required to enable the Child to exercise and access the curriculum (179 – 180).
29. The tribunal concludes that much of the provision delivered by the teacher for the visually impaired will be front loaded in that an assessment of the new school and advice upon modifications will be required when the Child transfers to a new school. In addition, the teacher's other proposed function is to support the mobility specialist. This appears to the tribunal to be a duplication of roles as the mobility specialist will offer training to the teaching staff in any event. The teacher considers weekly visits for the first half term will be appropriate and thereafter visits on a half termly basis to monitor and to update programmes and advice. Half termly visits will ensure consistent and regular support for the other specialist teachers.
30. There is agreement between the parties on the frequency of the visits of the teacher of the deaf and of the mobility officer.
31. Whilst urging the tribunal to accept its proposed wording, the LA confirms that it is in any event in a position to make the provision sought by the parents.
32. An analysis of the proposals shows that in effect there is very little difference in what the LA proposes and what the parents seek.
33. The wording suggested by the parents for the provision does seem overly long. Whilst a statement should quantify and specify the provision to be made there is no need to elaborate on how a specialist teacher should perform his or her role. It is sufficient in the view of the tribunal to specify how frequently and for how long a specialist teacher should attend, leaving the work to be undertaken to the discretion and expertise of the teacher in order to meet the Child's needs. The tribunal considers that the proposed wording of the LA is to be preferred because of its brevity. The tribunal accepts the Local Authority Representative submission that statements are 'intended to be documents used to guide provision in school', particularly in a

specialist setting. The tribunal therefore adopts the wording proposed by the LA subject to the findings above.

34. Whilst at School A the Child required one to one support throughout the school day. As the Child moves into a specialist setting then it is anticipated that the Child will receive support from teaching assistants trained and experienced in a range of special educational needs. It is also to be expected that the teaching assistants will receive ongoing specialist training.
35. An Educational Psychologist defines what they consider to be the role of a teaching assistant involved with the Child as having 'responsibility to ensure that learning materials are properly adapted to enable the Child to access the curriculum and in some cases will need to develop unique material to address the Child's particular needs if adaptation of existing material proves impossible. The teaching assistant will need to understand the Child's auditory, visual and multi sensory needs and the manner in which she processes sensory information, as well as the way in which the Child learns.'
36. The provision sought by the parents has again been defined by the MSI consultant. As highlighted by the LA Representative there is no evidence as to what training would be required but they accept that the LA would be in a position to provide a teaching assistant to meet the provision required. The tribunal is also satisfied upon hearing the evidence of Deputy Head at School B that this is the case.
37. The proposed wording by the parents for support by a teaching assistant appears appropriate. The tribunal will however insert the word 'experienced' into the description. In addition the evidence given to the tribunal suggests that touch typing may not be beneficial although that is an aspect that can always be kept under review.
38. Under the heading of Teaching Environment and Curriculum the parents ask for the insertion of the words "daily input" from experienced staff. Does it not follow however that when in a specialist placement a pupil will receive daily input from staff experienced in the various areas of need? The LA does not dispute that this is the case. These words do not add anything to the provision and are not interpreted as being placement specific.
39. The LA raised a query about a proposed physical rehabilitation programme. The LA objects to the proposed wording to avoid any suggestion that the programme is medically related. Upon receiving clarification that it is intended as a mobility programme the LA confirms in its closing submissions that it is able to make the provision. There appears to be no reason therefore why the proposed wording should not be included. The LA confirms in its closing submissions that the point can be agreed.

40. The last issue in dispute in part 3 is the inclusion of the words 'similar or more mature language skills' as a description of an appropriate peer group. This wording reflects the evidence given by an Educational Psychologist, and indeed the wording is taken from their report. The Educational Psychologist further believes that the Child would benefit from a peer group with similar needs to herself. In conclusions to a report dated May 2011, suggests that the Child needs a 'socially functioning and responsive peer group for her to get the most from her social learning environment.' The tribunal considers that simply as a matter of good sense that the Child will need a peer group that is similar- to whom she can relate and those with more mature language skills that can provide a good role model for her. The wording proposed by the parents is accepted in this regard.
41. Subject to the above findings the tribunal adopts the wording proposed for part 3 in the working document.
42. This therefore leaves the issue of part 4. The Appellants seek a placement at School C, being a non maintained special school for young people with little or no sight. Such placement to be on a 39 week residential basis. The LA accepts that this school could meet the Child's needs but argues that School B is the more appropriate/better of the two schools to meet the terms of the statement. The Parents do not accept that School B can meet their Child's needs.
43. There are 104 students on roll at School C. There are 36 young people between the ages of 16-18. Of these young persons 14 are placed in two groups of 7 whose National Curriculum entry level is 1-3. the Child would be placed in one of these groups.
44. School B is a Local Authority maintained special school. There are currently 107 pupils on roll.
45. The Deputy Head teacher from School B gave details about School B to supplement the extensive information contained in the bundle. The Deputy Head confirmed that the Child has visited the school on two occasions. The Deputy Head met the Child briefly on those visits. The Deputy Head reported that there were no mobility issues and that the Child had not expressed any sign of discontent at the time of the visits.
46. Details are provided at page 272 about the young persons who would be in the same class as the Child. Most of these young persons come from a mainstream primary school setting although no one has transferred to School B from mainstream secondary education. Six of the seven pupils in the class have good communication skills and are described by the Head Teacher as being very sociable and having many 'teenage' interests. One of the pupils in the class uses a communication aid.
47. The Head Teacher stated that most of the pupils in the class are working at the Child's level and above.



48. The pupils at School B are encouraged to be as independent as possible, and the Head Teacher gave the example of pupils going independently to the supermarket to buy provisions which they are then encouraged to cook for them self, under supervision. The mobility officer is also available to accompany pupils into the town.
49. The school was built in 2006 to comply with DDA building regulations. Every classroom and the school hall are fitted with sound field systems. There is a range of ICT equipment available to students supported by a full time ICT technician.
50. The pupils work towards accreditation through the ASDAN youth award and towards independence qualification. These being similar to the accredited courses on offer for pupils at School C. Attaining awards under the Duke of Edinburgh scheme are also an option for pupils as well as options in art, horticulture and team enterprise.
51. The evidence from the school is that the staffs are trained in signing and are experienced in teaching pupils with a range of impairments and in differentiating work according to their needs and abilities. A total communication approach is used throughout the school. Although the staffs are predominantly experienced with children with learning difficulties, the Deputy Head from School B confirmed that they have experience with children with multi-sensory impairments and that there are currently three other pupils at the school with such difficulties. The Deputy Head from School B confirmed that, the advisory teacher sees two pupils on Monday morning for an hour each and also supports the staff in implementing programmes, and also works individually with the children, often with a TA accompanying them. The class in which the Child would be placed has the support of three teaching assistants, not all full time.
52. The tribunal was also told that the pupils undertake work experience for a half day each week, and details are given in the bundle of a range of work experience placements attended by the pupils, all within walking distance of the school. We were told that sometimes the students go independently to these placements and on other occasions can be accompanied by support staff. The Deputy Head from School B emphasised that the children are encouraged to develop their independence skills from the moment that they step into the building. The school presents a secure environment for the pupils. The teaching and support team in the class ensures that they get to know each child in order to identify their particular individual needs. She noted that as the pupils go through the school a greater emphasis is placed on independence.
53. The tribunal was impressed by the evidence of the Deputy Head. The tribunal was given a clear indication of the ethos of the school and how the Child would be supported by a curriculum tailored to meet their

individual needs. The Child would be supported within the class and also encouraged to gain independence. An ESTYN inspection report in 2009 contained in the bundle awards a grade 1 to the school for all seven key questions, describing School B as a very good school with a large number of outstanding features.

54. Part 3 of the statement states that the Child requires 'access to a socially responsive and compatible peer group in terms of social and emotional maturity, social support and day to day peer networking. The peer group should have similar or more mature language skills.'
55. The MSI consultant in their report suggests that the Child requires a supportive and compatible peer group with good speech and language skills. The MSI consultant suggests that School B cannot provide the Child with access to good models of spoken language. Yet the evidence from School B shows that there are pupils in the class proposed for the Child with similar and better communication skills. In her evidence the MSI consultant said that the Child requires a peer group with 'age appropriate communication skills' so that the Child is surrounded by good speech and language models. However in March 2011, the Child's language level was at the age of five years seven months notwithstanding the significant gains in her communication skills since the cochlear implant. It is notable that the Educational Psychologist in their assessment of the Child's verbal communication indicates that 'the Child may experience great difficulty in keeping up with their peers in situations that require verbal skills'.
56. A description of the appropriate peer group is set out in part 3 of the statement and is quoted above. Notwithstanding the progress that the Child has made recently, given the level at which the Child is currently functioning and the difficulty that the Educational Psychologist considers that the Child would experience, the tribunal does not consider that it is appropriate for the Child's peer group to have age average skills as they would then function at a level beyond the Child's current attainment. It is pleasing that the Child is now rapidly making up lost ground, but the provision set out in part 3 is appropriate in that it enables her to enjoy a peer group with similar language skills so that the Child has peer to peer networking and also to associate with those with more mature skills that will provide a good role model. The tribunal concludes that School B is able to make the provision set out in part 3 in so far as providing an appropriate peer group is concerned.
57. The case for a twenty four hour curriculum was not pressed by either party during the hearing, although if the Child were to attend School C on a residential basis then the Child will have access to a twenty four hour curriculum. The Educational Psychologist in their report states 'The Child would benefit from an enhanced and extended specialist school provision ..... on a twenty four hour basis'. As pointed out by

the LA Representative in their closing submission 'this of course is not the appropriate test as we must concentrate on the Child's needs in terms of their education'. The Educational Psychologist report contains numerous recommendations, although these do not address or explain why the Educational Psychologist considers that the Child 'needs' a twenty four hour working day curriculum. In addition the MSI consultant at page 179 of the bundle makes recommendations that can be made in a day provision. At page 182 the MSI consultant lists the benefits of a placement at School C. Other than suggesting that the residential element of the school supports the development of independent living skills there is nothing further to indicate why a twenty four hour curriculum is required. There is therefore little persuasive evidence that there is an educational need for a twenty four hour curriculum. The tribunal also bears in mind the provision of para. 8.74 of the Code of Practice, which sets out the criteria when the twenty four hour curriculum may be considered appropriate. In the circumstances, the tribunal finds that such a provision is not an educational need.

58. One of the main objections to a placement at School B is the journey time to and from school. The Child and their family live in a rural location. The tribunal is told that the journey to and from School B could vary between an hour to an hour twenty minutes each way, depending on whether or not the Child is accompanied by other pupils. There is a potential for the journey to be shared with two other pupils. If the Child travels with others then their journey time is longer. The guidance to the Learner Travel (Wales) Measure 2008 suggests that journey times to a secondary school should be no longer than sixty minutes. However longer journeys may be appropriate for pupils in rural areas. The LA argues that the journey time proposed for the Child to School B conforms to the applicable guidance.
59. The Parent gave evidence to the tribunal that the Child was absolutely worn out after the journey from School A which was only about twenty minutes in duration each way. The Parents also stated that the Child didn't want to undertake the long journey. The Parents argue that a long journey will leave the Child exhausted at the beginning of the school day and also exhausted upon returning home, thus making it impossible for her to engage in any social activities.
60. The tribunal is referred to the letter dated August 2011 from an advanced physiotherapist, in which they deal with the problems in respect of travel. The Physiotherapist writes *'If the Child is placed in School B, attending the school would necessitate an hour and a half's journey each way. Three hours of travelling is unacceptable as this would be extremely tiring for the Child and adds significantly to the length of the Child's day ..... The geographical distance of the*

*school from the Child's home would also limit their opportunities for social interaction with school friends outside of the school day'. The length of the journey to School B is a matter of concern to the tribunal. It is however inevitable that living in a rural location will lead to longer journey times. This is envisaged in the guidance issued by the Welsh Ministers. The tribunal is satisfied that the duration of the journey falls within those published guidelines. In addition whilst concerns in relation to the journey times are justifiably highlighted, the evidence does not show any physical or medical reason why the Child should not be able to undertake the journey. It is not appropriate or relevant to compare the journey times. Although the journey to School C is three hours in duration, that journey would only be undertaken twice a week at most.*

61. Due to the nature of the Child's complex medical needs the Child is involved with several medical practitioners. These medical practitioners have all written in support of a placement at School C. The LA at page 263 seeks to undermine this evidence. We are urged however by the Parent Representative to disregard the statement from the Medical Practitioner on the basis that it is neither signed nor dated. This is indeed a pertinent point. Unfortunately it is a regular feature of documentation produced to this tribunal that they are not signed and are frequently undated. The reason for this appears to be that documents are initially transmitted by email, but that the original document signed by the author is not then filed. It is the case in this current bundle that the Medical Practitioner's statement is not the only unsigned document. For the reasons given the tribunal does not place any significant weight upon the Practitioner's evidence when considering the overall impact of the supporting letters/reports from the medical practitioners. The tribunal however is mindful that these reports are filed by medical practitioners who are not able or qualified to provide any educational reason for supporting a placement at School C. The tribunal regards these reports as confirmation that there are no medical reasons why the Child cannot take up a placement at School C. There is no evidence either to suggest that there are any medical reasons as to why the Child cannot attend School B. This evidence is given from a medical perspective and does not address educational issues. The practitioners are reporting on the basis of the information that has been given to them by the Child and the Parents and it is only to be expected that they are anxious to support their patient in fulfilling their wishes.
62. Whilst the role of this tribunal is to identify the Child's special educational needs and to ensure that provision is made to meet those needs, it is important not to consider those educational needs in isolation. It is also necessary to consider the wider social benefits,

although an educational placement however cannot be deemed appropriate by social needs alone.

63. The Parent gave evidence to the tribunal about the difficulties that they face as a family. In addition to explaining the difficulties faced by the Child with daily living and participating in social activities, The Parent also gave details of the Child' challenging behaviour and how the Parent, becomes the target of the Child's physical aggression.
64. It is clear from the Carer Assessments prepared by social services and contained in the bundle, that social factors weigh heavily with this family in their decision to seek a placement at School C. The Parent confirms that the Child herself wants to get away from home and that the Parents also want a break from the strains and stresses of caring for the Child on a daily basis. The Parents told the tribunal that they want a social life and a home life and the only way that this can be achieved is for the Child to attend a residential placement. Such a desire is understandable.
65. The tribunal was told that the Parents have been offered respite care by the local authority for two nights a month. This offer has been declined hitherto. The Parent explained that they did not wish to see the Child being placed with a carer. The tribunal was informed that the prospect of respite care remains available.
66. The family are taking up a service from Action for Children, which provides sessional worker support in the community for three hours a week. This provides an opportunity for the Parents to undertake the shopping. The Parents gave evidence about evening activities attended by the Child, such as guides and a cookery course in. The Child enjoys these activities. One of the reasons that the Child has been able to engage in the activities is that the Child has not been attending school since July 2011 and has therefore not been as tired as the Child might have been after a school day.
67. Developing independence skills and social interaction is a priority for the Child and her parents. There are clearly limited opportunities for social interaction in a remote location. However as outlined above the tribunal considers that the evidence from the Deputy Head at School B underlines that opportunities for acquiring independence and social interaction will arise at School B and that the school places a high priority on encouraging independence for its pupils. The tribunal is satisfied that School B is in a position to more than meet the demands of the statement in that regard.
68. The tribunal was informed about a facility. This is a respite care provision which shares a campus with School B and is operated by the LA's Children's Services Department. This facility enables pupils to stay overnight during the week and to engage in social activities. In addition to having access to the school grounds and facilities they have

the opportunity of being taken out into the community as well. These opportunities will further develop both the Child's independence and social skills. The staffs at this facility are fully trained and liaise with the staff at School B in assessing the needs of each individual pupil. The staffs at the facility also attend the pupil's annual reviews. The LA confirms that there will be the opportunity for the Child to access this facility on a fortnightly basis.

69. The case of *West Sussex Council v. ND* [2010] 349(AAC) deals with the weight that is to be attached to the views of a child. The Child is of course seventeen years of age and has expressed a clear wish to attend School C. The Child has been consistent in this view for some time and has expressed a similar view to numerous professionals and to the Child's advocate.
70. The tribunal is referred to the conclusions of Judge Pearl in that case when he states *'It is my view that each case will often turn on its own facts. The views of the child will not act as a veto to all other considerations but the older the child, the more important it will be for the child's views to be given more weight. The Code of Practice and the UN Convention on the rights of the child ..... both demonstrate the importance of giving due weight to the views of the child in accordance with the age and maturity of the child ..... But as a general proposition it must follow that the local authority would be making an error of law if it totally disregarded the express wishes of the child but likewise, it would be making an error of law if it followed the views of the child regardless of any countervailing indications that pointed to a different conclusion. It must always be a question of weight that is to be attached to the views of the child. The older the child and the more mature the child the greater the weight that should be attached to those views.'*
71. An important factor in the Essex case is that the tribunal met with the young person and were able to directly assess their level of understanding. This tribunal did not meet with the Child. However it remains the case that the Child is seventeen years of age and their views are of great importance. To what extent however should the Child's views be determinative of the tribunal consideration of whether or not School B is an appropriate placement?
72. The Deputy Head for School B in their evidence stated that the Child did not express any sign of discontent while visiting the school, although they only met with the Child very briefly. As would be expected of any school, they stated that the school had experience of pupils who are reluctant to attend.
73. It is noted that the Child has indicated to their independent advocate that the Child did not like School B. The Child has not indicated that they would not attend School B. The tribunal accepts the submission

made by the LA Representative that the Child's views are in general quite moderate.

74. The Educational Psychologist's report contains considerable detail about the importance of listening to the views of the child. The Educational Psychologist comments that following their discussions with the Child *'I was struck by the passion and well-argued points of view the Child presented without the involvement of any external advocacy or prompting, particularly bearing in mind the range of the Children's needs'*. There is no report of the Child having raised any objections to School B however.
75. The needs referred to by the Educational Psychologist are encapsulated in the paragraph entitled 'Summary of Weaknesses' in their report, *'During my assessment of the Child I noted the additional time the Child needed to process information and to then respond, significant difficulty with visual-perception and motor co-ordination tasks, difficulties perceiving the qualities of shapes and objects, the Child novel activities required much close support and guidance, facial recognition can remain a difficulty for the Child and how the Child is emotionally and socially prone to isolation, immaturity and vulnerability. Learning is undoubtedly a challenging and slow process for the Child compared to their peers because of the complexity of the Child's sensory impairments and their learning difficulties, and also because of the Child's additional learning needs that the Child presents with, including poor fine motor development, aspect of weak visual-motor co-ordination and their compounding nature as well as important psychosocial factors including poor self-confidence, low self-esteem and weak and somewhat immature levels of self-advocacy and self-assertion'*.
76. The tribunal also notes the evidence of the Deputy Head of School B when they state that the Parent has expressed a strong preference against School B. It is not unreasonable to conclude that parental preference has had some influence upon the Child especially when considered in the context of the family's daily functioning. The tribunal was also told that the Child has had holiday breaks where the Child has met pupils from School C. It is clear that these meetings have quite naturally also had an influence on the Child.
77. Whilst bearing the above factors in mind and recognising the Child wishes the tribunal must also consider the Child overall level of maturity which leads the tribunal to the conclusion that it is not appropriate to allow the Child's wishes to be the deciding factor.
78. Both School C and School B acknowledge that the Child's sensory needs are well met and that the issue now is to address the Child's learning needs. The Deputy Head of School C confirmed this in his

evidence to the tribunal when they also indicated that the Child needs should be addressed holistically.

79. The LA accepts that School C can meet the Child's needs. The LA Representative in their written submission raises potential difficulties with School C but those issues cannot detract from the LA's acknowledgement that the school is appropriate.
80. The tribunal also concludes for the reasons outlined in this Decision that School B is also well placed to meet the special educational needs set out in part 2 by delivering the provision set out in part 3 of the Child's statement of special educational needs as now amended. School B is able to provide for the Child's learning needs, it can meet the Child's sensory needs and will provide an appropriate peer group. The school will provide the opportunities for social interaction and inclusion and will enable the Child to develop their independence skills. There is also the possibility of additional activity outside school hours which will enhance the opportunities to achieve independence and provide further opportunities for social interaction.
81. On the basis that both schools are appropriate to meet the Child's needs it is necessary to address the issue of costs. It is unfortunate that the LA did not provide comprehensive costs information prior to the tribunal hearing. However some information has subsequently become available in response to the questions raised by the Appellants' representatives.
82. There is no disagreement that the cost of a placement at School C, including the cost of travel amounts to £93,368.61 for a five day placement. This is apportioned as to £80,248.61 for the costs of the school and transport costs of £13,120.00.
83. If the Child attends as a termly boarder then the cost is £96,872.09 plus travel of £7,680.00 making a total of £104,552.09.
84. The LA states that the cost of a placement at School B is nil. It sets the travel costs at £17,100.00 based on a rate of £90.00 per day for an hour's journey.
85. The tribunal reminds itself of the provisions of section 9 of the Education Act 1996 as amended by the Local Education Authority & Children's Services Authority (Integration and Function) Order 2010 which reads as follows: '*Exercising and performing all their respective powers and duties under the Education Act the Secretary of State and local authorities should have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, in so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure*'.
86. The cost to be taken into the account is the entire cost to the local authority. The parents refer the tribunal to that part of the judgement of Sullivan L J in *EH v. Kent CC* [2001] WCA CIV709 which states "*the*



*question whether placing the child in a particular school would cause 'unreasonable public expenditure' should be approached by the FtT in a common sense manner. Fancy accountancy work which produces an unrealistic result – whether an excessive figure based on global costs including fixed costs, or a cost-free placement – is unlikely to be persuasive before the FtT.”*

87. The LA relies on *B v. Worcestershire* [2010] UKUT 292 “*section 9 does not invite speculation about this nor does this invite forensic examination of every detail ..... nor does section 9 require an arithmetical calculation. Disproportionate precision is not necessary. Rather it is a balancing exercise in which the probable comparable costs of the two placements are part.*”
88. The LA invites the tribunal to find that the placement at School B incurs no additional cost on the basis that School B is a prefunded special school for up to 110 pupils. There is a document entitled “Proposed changes in respect of the authority’s fair funding formula with effect from September 2009” annexed to its closing submissions. This document explained that for School B *‘the level of staffing set out is that proposed per school whilst the total pupil numbers range from 95 to 110’*. It is only when the number of pupils exceed 110 that additional funding will be considered. The tribunal was told that if the Child attends School B then there will be 108 pupils on the roll and the funding will remain unchanged. Therefore there is no additional cost incurred by the LA for a placement at School B.
89. The Appellants invite the tribunal to find that there must be a cost to the placement but do not offer an alternative method of calculating or identifying such cost. It is highlighted on behalf of the LA that the case of *EH v. Kent* deals with maintained schools and not prefunded special schools. The tribunal accepts the LA’s argument in this regard as being logical and in accordance with the Oxfordshire principle
90. The LA also states that the specialist teaching will be provided at no additional cost. This argument is deployed on the basis that the visual impaired teacher, the hearing impaired teacher and the MSI teacher are all already on the LA’s staff or contracted to provide services to the authority.
91. Details are provided of the salaries paid to the VI teacher and the HI teacher. Given that the services of these individuals are currently available to School B then the tribunal accepts that no additional cost will be incurred. The position is also the same for the mobility officer who is an employee of the authority.
92. The service of the MSI teacher is bought in from the Council. An invoice is provided which purports to show the cost of the service for the summer term 2011. This amounts to a global sum of £6,832.00. The narrative in the invoice refers to provision at a school. It is unclear

which school is referred to but the tribunal will accept that this is the correct annual cost. An annual sum of £20,496.00 on the services of an MSI teacher.

93. It is known that the MSI teacher already attends at School B to see at least two other pupils and the evidence from the Advisory Teacher is that they have the capacity to see the Child in School B. The Advisory Teacher also provided a weekly outreach service to the Child at School A. This of course was an out of county placement and it is therefore fair to assume that there will be no additional cost if The Advisory Teacher provides a weekly service for the Child at School B. Let us assume for the purpose of this calculation that a third of the overall fee is attributed to meeting the provision in the Child's statement.
94. The transport costs are placed at £17,100.00 on the basis of the Child travelling alone without an escort. Applying the Oxfordshire principle, if the Child were to travel in the car which is already used to transport two other children then the cost would be reduced.
95. Although the Parents have hitherto declined to accept short respite breaks, we are told that the cost of such breaks is £1,230.00 per annum on the basis of a two-night break on one weekend a month. In addition the cost of community support for three hours a week is £1,872.00 and it is appropriate to include this figure in the calculation as it is a cost to the authority, albeit probably paid by Children's Services.
96. Assuming also that if the Child were to attend the facility once a fortnight then the annual cost of that respite provision is £12,624.00.
97. By totalling the above services we reach a total cost to the LA of £39,658.00 per annum and over two years a total cost of £79,316.00. This remains at less than half the cost of a placement at School C.
98. We are however urged by the Parents Representative in their submissions to note the decision in *K v. Hillingdon* [2011] UKUT 1(AAC) and to take into account the wider benefits that such a placement will bring. This tribunal is satisfied for the reasons explained above that School B is not only able to address the Child's learning needs but is able also to provide the wider benefits that give the opportunity to gain independence and to become involved in social activities. The tribunal has also included the cost of providing such additional social care provision in its cost calculation. The tribunal is satisfied that even by taking in accounts those wider benefits into account the cost differential as calculated above is so significant as to amount to unreasonable public expenditure.
99. This appeal succeeds to the extent that parts 2 and 3 are amended as outlined above, but fails in relation to part 4. Part 4 of the statement will remain as currently drawn in naming School B as an appropriate placement.

(Amended statement wording was attached)

Dated January 2012

Chair