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DECISION

Date of Birth:	2000	
Appeal of:	The Parent	
Type of appeal:	Against the contents of a statement of SEN	
Against Decision of:	The Local Authority	
Date of hearing:	2011	
Persons present:	The Parent	<i>Parent</i>
	Witness	<i>Parental Support</i>
	The Local Authority	<i>Assistant Director of</i>
	Representative	<i>Education</i>
	The Local Authority	<i>Educational Psychologist</i>
	Witness	
	The Local Authority	<i>Inclusion Advisory Teacher</i>
	Witness	

Appeal

The Parent appeals under Section 326 of the Education Act 1996 against the contents of a statement of special educational needs made by LA for the Child.

Issues

The Tribunal identified to the parties at the outset of the hearing, the legal questions to be considered by the Tribunal in the appeal. The Parent sought to name a maintained school, albeit in a neighbouring local authority, as the school of parental preference for the Child. In those circumstances, the Tribunal must take into consideration the provisions of paragraph 3 of Schedule 27 of the Act in reaching its conclusions. Paragraph 3 of Schedule 27 provides that where the parents identify a mainstream school, the LA (or the Tribunal on appeal) shall name the school, unless it is unsuitable to the Child's age, ability, aptitude or special educational needs or a placement at the school would be incompatible with the efficient education and training of other pupils with whom the Child would be educated or the efficient use of resources.

Preliminary Issues

Applications were made by both parties for submission of late evidence and the Tribunal concluded that the evidence should be admitted.

During the hearing, the Parent made a further request under Regulation 33(3) for permission to present in evidence a core assessment report. The Tribunal concluded that the discrepancies between the oral evidence given at the hearing by the Parent and the information provided to the social worker in the course of

preparation of the core assessment was so disparate as to create an exceptional circumstances and we concluded that there was a serious risk of prejudice to the Child unless the evidence was admitted and allowed the application.

Facts

1. The Child is 11 years old and has a recent diagnosis of attention deficit hyperactivity disorder and challenging behaviour. The Child has been attending Pupil Referral Unit attached to School A since 2011 and is of an age to transfer to secondary school in September 2011. The Child was placed in voluntary care by their Parent in 2011 and remains with foster carers living in the area.
2. There have been four primary school placements so far for the Child, the Child's exclusion from the last being enforced within days of his commencing there due to the Child's challenging behaviour. The Parent had been requesting a placement at School B, a Special School maintained by a neighbouring LA on a weekly residential basis in order to address the issues of the Child's challenging behaviour but the request was resisted by the LA.
3. Following the Child's move to School A PRU, evidence contained in the school report dated 2011 and from the behaviour advisory teacher, confirmed that the Child was happy and settled and making good progress at the school. The Child is in a very small group of three pupils, with the Child now the eldest, being of Key Stage 3 age. The other pupils are in Key Stage 2. The LA decided that the Child should be kept in the unit for another academic year to enable the Child to catch up with the education that the Child missed when moving between schools during Years 5 and 6. The Parent had specifically asked for the Child to be allowed to repeat Year 5 in 2010-11 but the request had not then been actioned.
4. During the hearing, the Parent gave evidence that they were extremely concerned about the Child's deteriorating behaviour and found the Child's increasingly challenging behaviour so difficult that the Parent had to put him into voluntary care in 2011. The statement and early reports attributed the Child's behaviour to the conduct of the Child's Parents in their infancy, when the Child had been subject to domestic abuse and substance misuse. During the hearing, the Parents' position was that they wanted the Child to be returned home to live but would not be able to do so until the Child's behaviour improved. The Parent clearly stated that they intended for the Child to return home to live once the issues of their challenging behaviour had been addressed. The Parent believed that if the Child were in the correct educational placement, then the Child would be able to return home for weekends and holidays.
5. Social Services are currently undertaking a core assessment of the Child's social care needs following the Child's placement in voluntary care and during the course of the hearing, the Parent requested that the initial core assessment should be presented in evidence. The request was allowed by the Tribunal and it was noted that the Parent had been uncooperative with the social services agencies, rendering the process of arranging and executing a core assessment very difficult. The Parent had also stated that they did not want the Child to return home at all because the brother was frightened of the Child.
6. The Parents' oral evidence was in direct contradiction to the evidence shown in the core assessment report and reported as said to the social worker.

7. The LA representative at the start of the hearing that the LA were not opposing the appeal on the basis that a placement for the child at School B would be contrary to any of the provisions of paragraph 3 of Schedule 27, but because the LA was of the view that the provision currently in place for the Child was better and would be more suitable to meet the Child's needs than residential provision at School B. Further, the LA representative believed that if they had looked in detail at the cost implications of placing the child at School B, it was likely that the placement would be cheaper than the Child's current provision at School A. However, the LA representative remained adamant that to place the Child at School B, at the age of 11, where the other pupils are more mature than the Child is and with hardened challenging behaviour issues, it would expose the Child to inappropriate role models and confirm in the Child's mind that they have entrenched challenging behaviour issues, which the LA does not believe the Child has. The LA representative explained that the Child is very young in their academic year, and is also vulnerable because the Child presents as immature in stature and as a younger child. For these reasons, the LA did not agree to placing the Child at School B, believing the Child to be better placed at School A.
8. The Parent sought some amendments to Parts 2 and 3 of the statement. At the hearing, the Parent explained that the Child puts them self in danger, as well as other children and this was the reason why the Child had been excluded from School C. The Parent did not consider that Part 2 reflects the fact that the Child is currently unable to follow their education at an age related level and it does not reflect the Child that the Parent knows. The Child has not been educated in a mainstream class for some considerable time, always being placed in a very small group or PRU with support.
9. The Inclusion Advisory Teacher (LA witness) confirmed that there was no objection to the proposed amendments and that the list of difficulties which they had included in their recent report dated 2011 could be included as the summary of difficulties in Part 2 of the Childs' statement.
10. The LA was concerned about various aspects of the Childs' behaviour, attributing at least some of the Child's recent problems to their Parent's decision to remove the Child from a relatively high dosage of Ritalin without medical supervision and without even informing the consultant paediatrician or school. The Child had been on an increasing dose of Ritalin to address the symptoms of his ADHD for about two years before the Parent decided that it was not assisting the Child's behaviour and stopped the medication. The Parent did not inform the school, who for a time continued to provide the Child with his dosage at lunchtime. It was the Child them self who eventually told the school that they no longer required the medication and that they were not getting any at home
11. The Inclusion Advisory Teacher described the provision that the Child is currently receiving at School A and the improvement in the Child's attendance over previous mainstream placements. The Child has attended 100% of sessions since their enrolment there and there have been no major incidents arising from their behaviour. The Teacher described the staff's pleasure at the progress that the Child has made there, having made significant gains in spelling and in their ability to concentrate and focus on work. The proposal is that in time the Child will be reintegrated into mainstream so that the Child can transfer to provision,

School D, at the school where there is provision for nurturing vulnerable pupils and enabling them to be included in mainstream provision as it suits their needs.

12. The Child has received input from a behaviour support assistant employed by the behaviour support team, since 2010 and it was reported that the Child's behaviour at school was much improved through the intervention provided.
13. During the course of the hearing the parties agreed a form of words for describing the provision proposed for the Child whereby the Child was kept in Year 6 for another year. And it was proposed by the LA that Part 4 of the statement should be amended now to describe not only the Child's current provision but also the Child's provision in secondary education from September 2012.
14. It was alleged that the Parent was not engaging with the LA in discussing proposals for the Child. The Parent maintained that they had been fully engaged with the LA until 2011 when they had decided that they could not trust the LA, because certain action had been agreed in meetings but the LA then failed to deliver as agreed. From 2011, the Parent had asked the LA to communicate with them in writing and the Parent had not received any further communication from them. The Parent stated that they were firm in their conviction that allowing the Child to continue at School A would be detrimental to the Child in the longer term and that a placement at the secondary provision, School D, would not be sustainable because of the length of the journey once the Child had returned to live at home. The Parent described some of the incidents that had occurred in previous schools and wanted to see the Child at a placement where the Child could succeed and make progress. The Parent gave evidence that the foster placement is now under considerable stress and the foster carers have been given respite provision at weekends because of the Child's challenging behaviour. The Child remains in the foster placement during the week and spends their weekends at a residential home in another authority. The Child had not had contact with his birth family for at least two weeks prior to the hearing.
15. The Child believes that they will be attending School B soon, and is excited by the prospect. The Inclusion Advisory Teacher expressed their concern about the illusion the Child has about the school and the type of provision that the Child would receive there.
16. The LA Representative acknowledged that the statement had not been appropriately amended when the most recent amendments were made and that further amendments were necessary such as the removal of the reference in Part 3 to his reintegration into an infant's reception class.

Tribunal's Conclusions with Reasons

We considered the evidence presented both in the papers and orally at the hearing together with the provisions of the Code of Practice for Wales 2001. We concluded that:

- A. The Child is a young adult who has suffered significant disruption both to their education and to their family life over a long period. The descriptions of the Child's challenging and manipulative behaviours in mainstream primary schools are unusually challenging for a child of their age.

- B. The LA did not seek to persuade us that School B was an inappropriate placement for any reason other than the Childs' social interaction. The LA Representative confirmed that the educational provision there would be appropriate to meet the Childs' needs and in all probability would be cheaper than the provision currently offered to the Child in the authorities' area. The LA had made an application for a postponement of the final hearing of the appeal until decisions had been made about the Childs' long-term placement and Social Services had made decisions about the Child's rehabilitation to their family. The request had been refused and had not been renewed to the tribunal panel on the day of the hearing. It was clear from the evidence that there was a problem about the process of information sharing between those responsible for making decisions about the Childs' education and the social worker, and it did not assist us in our decision making that the evidence was so sparse about the discussions surrounding the Childs' social care. Clearly, it will be of significance whether a decision is made to return him to his home or to place him with long term foster carers because in geographical terms it changes the evidence leading to conclusions about suitable placement.
- C. There are minor changes that we are prepared to make to Parts 2 and 3 of the statement to reflect amendments requested by the parent to which the LA agreed. We considered the request from the parent to amend Part 3 to include a reference to the Child being taught with pupils of an age that is a year below the Child's chronological age, but in special provision such detail will not be necessary and we propose to include in Part 3 only the description of the Childs' difficulties as identified in the Inclusion Advisory Teachers' report of 2011.
- D. We were extremely concerned about the unreliability of the Parents' evidence because there were clear contradictions between their oral evidence and their recorded comments to the social worker in the course of preparing the core assessment. We are extremely concerned about the possibility that placing the child in voluntary care may have been a strategy for forcing the LA's hand in order to secure a residential placement for the Child earlier than they might otherwise consider.
- E. The choices for the Tribunal were stark: either to adjourn the hearing and direct further evidence in relation to the social care aspects of the Childs' life, or to proceed on the basis of the information available, bearing in mind that if there is a significant change of circumstance then it is possible for the parties (within strict time limits) to request the Tribunal to review its decision in the light of those changes of circumstances, provided an application for a review is made promptly.
- F. We concluded that there were two reasons why we should conclude the appeal immediately: there is no clear timeline for decisions to be made on the social care issues and consequently, it does not benefit the Child to have the appeal held in abeyance for an indefinite period. Secondly, if the circumstances change and the Child is either returned to their family or a decision is made to place the Child permanently with foster carers, then the LA will be obliged to hold an early review and to revise the Child's statement accordingly. We did not consider that it was in the interests of justice for the Childs' secondary placement to be considered now with so many variables as yet unresolved. To do so would be to remove a right of appeal against the proposed placement as and when that decision is made.

- G. Having taken into consideration the Childs' educational needs, the disruption that the Child has encountered during their primary education and more recently in the Child's home life, we concluded that the primary consideration must be providing the Child with a stable and suitable educational provision that will address the Child's learning needs as identified in Part 3 of the statement. On the basis of the case put forward by the LA and the evidence presented, there was no good reason why School B should not be named in Part 4. The LA acknowledged that they had not sought to persuade the Tribunal that any of the exceptions in paragraph 3 of Schedule 27 applied, but that the LA was confident of its own ability to provide for the Childs' needs. Unfortunately for the LA, the Tribunal is a legal forum which must abide by the conditions set out in the legislation.
- H. We were impressed with the evidence about the quality of the developing structured provision within the Behaviour Support Service. The 3 to 19 provision at School D clearly offers a high level of expertise and support which will benefit many children with difficulties similar to the Child. That is not sufficient however, in terms of the legal considerations the Tribunal must make, to enable the LA to successfully resist the current appeal.

Order

Appeal allowed.

It is ordered that the LA amend the statement of the child as follows:

- i) In Part 2, by amending as follows:
 - a) By adding at the end of the second paragraph the clause “..presenting danger to the Child and their peers”
 - b) By removing the first sentence of the fourth paragraph and replacing it with the following: “The Child has a diagnosis of ADHD but is not currently taking medication.”
 - c) By deleting the clause “..which may be short term..” from the fifth paragraph
 - d) By including within the description of his difficulties that: “the Child wants the attention of the adults in the room especially if they are new. The child finds it very difficult to share the adult attention with their peers. The Child is learning strategies to calm them self down by taking them self away from other pupils when the Child becomes agitated. However, the Child is still displaying some disruptive behaviour and threatens physical aggression. The Child is able to play co-operatively within a very small group with children who are known to the Child as long as the Child has a high level of adult support. However, the Child is insecure and has great difficulty interacting with new children. The Child attempts to cope with this by putting on the persona of the Child's favourite wrestling character trying to prove that the Child is hard and macho.
 - e) By replacing the current summary of difficulties with the following: Behaviour, Emotional well being, social skills and peer relationships, ADHD and literacy.”

- ii) In Part 3,
 - a) By removing the reference to the goals “of the infants’; reception class” in the objectives; and under the heading in subsection 1;
 - b) By including in the description of his provision that :”The Child responds well to a highly differentiated curriculum that gives the Child the experience of success. The Child also responds well to multi sensory and hands on methods of learning. The Child will need a very clear and robust plan when he transfers to Key Stage 3 provision”
- iii) In Part 4, by replacing the existing with the following: “A special school placement. School B.”

Dated September 2011

Chair