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## **Decision**

<b>Date of Birth:</b>	2000	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Contents of a Statement	
<b>Against the Decision of:</b>	The Local Authority	
<b>Date of Hearings:</b>	October 2012	
<b>Persons Present:</b>	The Parent	<i>Parent</i>
	The Child	<i>(afternoon session)</i>
	Parent Representative	<i>IPSEA</i>
	Parent Witness	<i>Consultant</i>
	Parent Witness	<i>Principal at School A</i>
	LA Representative	<i>Educational Psychologist</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>Specialist Teacher School B</i>

### **Appeal**

The Parent appeals under s.326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs issued by the Local Authority in respect of the Child. The Statement is dated June 2011. The Appeal is in respect of Parts 2, 3 and 4 of the Statement.

The case was initially considered in June 2012 and then adjourned. Directions were set down in a Decision in July 2012. In addition, Directions were made early September 2012 and following a Telephone Case Management Conference in September 2012 further Directions were given and set down dated September 2012.

This Decision takes into account the above and should be read alongside the Decision of July 2012 and the Directions of September 2012.

### **Preliminary Issues**

At the start of the hearing the Tribunal and the parties clarified that each had 4 bundles of evidence and in addition that each had copies of a report from the Miskin Project dated September 2012 and a copy of an initial Children's Assessment relating to the Child and the Child's family, completed by a Social Worker, dated August 2012.

The Parent Representative applied to admit late evidence under s. 33 (3) of the Special Educational Needs Tribunal Regulations 2001 in respect of an addendum report from Speech and Language Therapist, dated September 2012. The report was made available to the Tribunal and to the Local Authority on the morning of the hearing. The report corrects a typing error contained in an earlier report of August

2012 and goes on to give additional clarification of the Speech and Language Therapists opinion. The Local Authority objected to the admission of the report at this late stage. The Tribunal decided to admit the paragraph in the report which corrects the error in an earlier report but it refused permission to admit the remainder of the report. The Tribunal could see no reason why the Speech and Language Therapist could not have expressed their opinion earlier so that it was submitted in line with the Directions from the Telephone Conference in September and it did not consider that there were any exceptional circumstances that justified admission at this point in time.

During the evidence given by the Head Teacher at School A, reference was made to the examination results of School A. For ease of reference it was agreed that written information concerning this issue would be used by the parties and the Tribunal.

The Parties have submitted 2 agreed Working Documents. The first was submitted following on from the Directions given at the Telephone Conference in September 2012 and is dated September 2012. The second is a later version of this document. It was agreed that the latest version of the document, which is dated October 2012, would be admitted into evidence and used by the parties and the Tribunal during the hearing.

It was also reported that the Child would like to attend part of the hearing. In view of this the parties and the Tribunal agreed that the Child should attend at the start of the afternoon session so the Child could meet the Tribunal Panel Members responsible for making this Decision and so the Child had the opportunity to speak to the Tribunal and let the Tribunal know their views. It was agreed that the Child would be accompanied by the Parent, Parent Representative and the Local Authority Representative would also be present.

## **Facts**

1. At the time of the latest hearings the Child was 12 years old.
2. The Facts, as outlined in the previous Decision of July 2012, relating to the Child's special educational needs and to the Child's school history remain relevant.
3. The position of each of the parties during the hearing in October 2012 remained essentially the same as that expressed at the hearing in June 2012. Details of each party's case are summarised in the Decision of July 2012 and they are not therefore repeated here.
4. In regard to the position taken by the Local Authority, the Local Authority Representative explained that the Local Authority has direct knowledge of School A. The Local Authority Representative said that they had visited the School and the Authority had placed children at the School in the past.

5. The Child remains out of school at the present time. The Child would now be in Year 8 if they were attending school.
6. The Tribunal heard that the Child continues to attend sessions with the Miskin Project for 2 days each week. The provision stopped during the Summer Holidays but resumed again from September 2012. The Tribunal has received a written report from a Senior Social Work Practitioner from the Project, dated September 2012, regarding the Child's involvement with the Project.
7. In addition, the Parent told the Tribunal that "Detached Youth" has carried on with its work with the Child. The Parent said that over the Summer the Child had attended small group sessions of 3 people, where the focus had been on magic. The Parent said that the Child enjoyed the sessions, although they did not show any particular interest in the other children. From September onwards the Child has continued to receive 2 hours of support each week from a Youth Worker. The Parent reported that this support appears to be going well.
8. The Local Authority Representative told the Tribunal that individual tuition was now being provided for the Child of 1 hour per day for 3 days per week, Wednesday, Thursday and Friday. The tuition takes place in a local library. The Child said that this provision had started just before the beginning of the Summer Holidays and had then resumed in September 2012. The Parent takes the Child to the tuition.
9. The Parent said that they were pleased with the Tutor identified to work with the Child. The Tutor had initiated contact with the Child in the first instance at a neutral venue. The Parent said that the Tutor has undertaken assessments in relation to the Child's Maths, and English and planned to carry out an assessment in relation to Science in order to tailor tuition to the Child's needs. The Parent said that after initial problems, the Maths assessment seemed to have gone well and the Child was able to work on a higher level paper. The English assessment did not go so well because the Child felt they could not do it and as a result this week the Parent said the Child refused to write anything during the session because they felt "useless". The Parent said they believe that the Science assessment will be better as this is an area where the Child can demonstrate their ability.
10. Over the summer the Child was referred to the Community Intensive Therapy Team (CITT) within the local Child and Adolescent Mental Health Team. This is Tier 3/4 provision. As a result since June/July 2012 the Child has been seeing a Consultant Psychiatrist on a monthly basis and a Nurse Therapist has been seeing the Child on a weekly basis. The Child is now been prescribed with medication to address their symptoms of ADHD.
11. The Parent told the Tribunal that in their view the Child is bored at home and the Child wants to go to school. The Parent said that the Child's main preoccupation at the moment is with the Army and shooting. The Parent said

that the Child has said they want to join the Army when they are older and become a Mechanical Engineer. The Parent told the Tribunal that over the Summer Holidays the Child's exhibited an obsession relating to skin cancer. The Parent told the Tribunal that they have recently seen an improvement in the rigidity that the Child has tended to have concerning the types of clothes they will wear, in that the Child has started to wear chino trousers and polo - shirts.

12. The Child's views about school and the tribunal process are recorded in a note dated August 2012 drawn up by the Child's Detached Youth Worker following a meeting with the Child in August 2012.
13. When the Child met with the Tribunal the Child preferred to answer questions put by the Parent Representative and the Parent and by the Local Authority Representative rather than speak to the Tribunal directly.
14. In response to questions from the Parent Representative and the Parent the Child said that they wanted to go to School A. The Child said they did not want to go to School B and said that they could not be made to go there.
15. When asked about what they did not like about School B the Child said that it was a large school and was concerned about there being lots of people and lots of noise. When the Local Authority Representative asked how they knew this the Child said that they had not been to School B themselves but the Parent had told them it was a big school. In response to the suggestion from the Local Authority Representative that the Child might feel worried about School B because they felt it was similar to School A the Child said they were not sure.
16. In regard to the Child's experience at School C the Child said that the kids in the PASE Unit had been ok. The Child said that they had been bullied sometimes when they were in mainstream classes and that some kids had come up to the Child and annoyed them. The Child said that some kids used to kick the ball away when the Child was playing football and that they had been hit a few times.
17. The Child said what they liked at School A was that it was quiet and staff were kind. The Child said that the 3 day assessment at the School had been good. The Child said the good bits were the fact that they did not do much work and that it was small and staff were everywhere so the Child felt safe. The bad bits were that some kids were always fighting with each other, mainly through shouting at each other.
18. The evidence given by the Head Teacher at School C, at the hearing in June 2012, is set out in the Decision of 2 July 2012. It is not repeated in this Decision therefore.
19. Since the hearing in June 2012 further evidence was submitted relating to this case. The Tribunal has been provided with a copy of a report on School

B which is undated and a copy of a report rebutting the position of the Local Authority dated July 2012. These reports support the conclusions that were drawn in an earlier report. In essence it supports the Child's case that the Child needs are such that they cannot be met in CDU mainstream provision and it is satisfied that School A is capable of meeting the Child's needs.

20. Since the hearing the Child has been assessed, at the request of the Parent, by a Speech and Language Therapist. The Speech and Language Therapist has prepared a report relating to their assessment dated August 2012. The Speech and Language Therapist concludes that the Child has very significant and severe problems with social communication skills and pragmatic understanding. They consider that the management of these difficulties is central to the Child's ability to remain within a school and to make progress within the curriculum and within the Child's social life.
21. The Speech and Language Therapist's recommendation is that the Child requires a placement in a specialist school setting where the staff understand the needs of high functioning ASD children and where the Child can be provided with support from a qualified Speech and Language therapist. The specifics of the recommendations are set out in the report. The Speech and Language Therapist did not have the opportunity of visiting either school before they made the recommendations.
22. A Consultant Child and Adolescent Psychiatrist, and Head of the CIT Team within the local CAMH Service gave evidence at the hearing. It was explained that they have responsibility for overseeing the care of children with more complex needs. It was explained that the Service aims to work in the community with children and young people at risk of requiring very specialist and intensive inpatient support at Tier 4.
23. The Consultant confirmed that they had been involved with the Child since July 2012 and they see the Child on a monthly basis. The Consultant said that to date they have met with the Child 3 times. The initial appointment lasted 3 hours and the other 2 appointments lasted 1 hour per session. In addition, they said they are responsible for overseeing the work of the Nurse Therapist who is working with the Child on a weekly basis for between 1 – 2 hours per week. The Consultant confirmed that they had prescribed the Child with Strattera which is a drug that is well known in the treatment of hyperactivity. The Child is currently prescribed 25 mgs and it is anticipated that this dosage will increase over time.
24. The Consultant told the Tribunal that in their view the Child has Asperger's Syndrome and ADHD with a coexisting diagnosis of Anxiety Disorder. They said they had read the papers in the bundle and felt that the descriptions of the Child in the papers were consistent with this diagnosis. The Consultant felt that the papers demonstrated that the Child has difficulties with executive functioning, a lack of social communication skills and difficulties relating to inhibition of emotional responses which are typically linked to these conditions. Based on own experiences of working with the Child, the

Consultant said that the Child has a level of anxiety that is over and above that which they would generally attribute to Asperger's Syndrome and ADHD. It was confirmed that the Child has thoughts about dying and the Consultant said that the Child experiences physical symptoms as a result of anxieties such as raised heart beat, sweating, and feelings of restlessness and lack of control. The Consultant subsequently described the Child as being very determined and as having a tendency to become fixated on ideas, which the Consultant linked in part to the Child's diagnosis of Asperger's Syndrome and in part to the Child's personality.

25. The Consultant said that the medication that the Child is taking is slowly beginning to reduce the symptoms the Child feels linked to ADHD. The Consultant has reported that the Child feels less restless and it appears as though the medication is buying the Child more time to think before they act. The Consultant said that once the symptoms of ADHD were under control it is probable that the Child's symptoms relating to Asperger's Syndrome and Anxiety Disorder would come to the fore. The Consultant said the symptoms of these conditions will need to be managed with therapy. In the experience of the Consultant once the symptoms of ADHD are controlled children with ASD and Anxiety Disorder may begin to exhibit more challenging behavior, not less.
26. The Consultant told the Tribunal that they have seen the reports and the Consultant said they do not disagree with the conclusions been reached concerning the Child. The Consultant agreed with the views in the Report concerning the Child's comprehension. The Consultant said that in regard to the report of the Parent witness whilst Speech and Language is not their field of expertise and there are aspects of the report that they could not corroborate because they have not tested the Child, the Consultant felt that the overall content of the report was consistent with what they would expect knowing the Child as they do now.
27. In regard to the issue of whether or not the Child exhibited challenging behavior in school, the Consultant said that the Team had not experienced such behavior to date. The Consultant went on to explain that this was likely to be because the Team had deliberately not put any pressure on the Child. The Consultant said that in their opinion the Child's' lack of emotional control could trigger a situation. The Consultant also said that it was not uncommon for children with ASD and related conditions to present more challenging behavior at home than in school because at home it is often more difficult to achieve a structured environment.
28. The Consultant told the Tribunal that in the last session with the Child they had asked the Child about their feelings concerning school. The Child had told the Consultant very clearly that they would not return to school unless they could go to School A. The Child told the Consultant that they had had a 3 day assessment at School A and that they liked the School and felt people there understood them and made the Child feel comfortable. The Consultant

said that they had deliberately not pushed the Child over schooling and had therefore not asked further questions relating to School B.

29. In regard to the proposed school placements the Consultant told the Tribunal that they had direct knowledge of School B because they had worked with the School. The Consultant said they were happy with the results achieved for the children in the School with whom they were involved. The Consultant said they have no direct knowledge of School A. The Consultant said that they had read the papers concerning School A and based on this the Consultant would not have a concern if the Child were to be placed at the School.
30. The Consultant told the Tribunal that they felt that the main obstacles to the Child accessing education were high levels of anxiety which are exacerbated when the Child faces challenging situations and when they find situations unpredictable and determination and stubbornness and tendency to have fixed ideas. The Consultant told the Tribunal that in their view the Child is a young person who does not respond well to being told what to do.
31. In view of the above, because the Child wants to attend School A and does not want to attend School B, the Consultant told the Tribunal that it would be undoubtedly easier and quicker to place the Child at School A than at School B. When asked by the Local Authority Representative whether it would be impossible to integrate the Child into School B the Consultant said that it would be a “challenge” and that it was not possible to say yes or no. The Consultant said that the Team would try their best to achieve it if this is what is decided. The Consultant said that it would be necessary to work with the Child closely to try to motivate them to go to the School and this would be very difficult.
32. The Consultant said that all children need to have social interaction with peers and now that the Child has started to become an adolescent they will need social contact with children of their own age. The Consultant said that although the Child has started once again to engage a little more with adults, relationships with peers will be a challenge for the Child in whatever setting. The Consultant said that peer relationships in adolescence are usually formed through young people sharing something in common. The Consultant said that this is an area where it is difficult to predict what will work and what will not and it will be a case of testing and seeing how things develop.
33. In regard to the issue of whether the CIT Team would be able to provide support for the Child in the context of each of the proposed placements the Consultant said in either case the Team would continue with their clinical role with the Child. The Consultant said that in respect of a placement at School B the Team would be able to offer formal and more informal ad hoc support if necessary. The Consultant said that they had worked with School B in this way in the past and this had proved successful for the children concerned. In relation to School A, the Consultant said that the Team could continue with formal support but that it was likely to be more difficult to provide the same

level of informal support to the School as would be available to School B because of the greater distance between the School and the CIT Team and because the School is situated within the area of a different Health Board. The Consultant said the issue of whether this level of support would be required was “another matter.”

34. The Decision of July 2012 sets out information that was available to the Tribunal at the hearing in June 2012 concerning School A and School B.
35. In response to the Directions given at the hearing in June 2012 both parties have submitted additional evidence concerning each of the Schools and how each proposes to address the Child’s needs. The Tribunal also heard detailed evidence from The Vice Principal and from a Teacher in Charge of the CDU at School B at the hearing in October 2012.
36. The Vice Principal told the Tribunal that having met the Child and the Parent at their home and then having had a 3 day assessment of the Child at the School they felt that School A was an appropriate placement for the Child and that it was well placed to meet the Child’s needs.
37. The Vice Principal said that because the School was already familiar with the Child, and because the Child was now familiar with the School and wanted to attend, the expectation would be that the Child would start at School full time as soon as possible. There would be no need for additional transition arrangements. The Vice Principal said that the School had considerable experience in managing children who had been out of school for lengthy periods and the approach that was being suggested for the Child had been successful previously. The Vice Principal also told the Tribunal that the School has very few problems with attendance once children start at the School as potential difficulties are identified quickly and addressed.
38. The Vice Principal told the Tribunal that the Child would be placed in Group E in the School which is a Key Stage 3 Group. There would be 5 children in the Group including the Child. The Group has a maximum number of 7 Children. The Group is all boys. The Vice Principal said that three of the boys in the Group have cognitive assessment scores that indicate that they have average or slightly above average ability. The boys are all working at National Curriculum Levels 2- 3 and above. Two of the boys have Asperger’s Syndrome like the Child. The other 2 have ASD traits along with ADHD and challenging behaviour. The Vice Principal said that the other boys in Group E exhibit behaviours similar to the Child in that they can be anxious, they can be defiant and they have motivational issues. The Vice Principal told the Tribunal that in their view the Child had similarities with other boys in the Group and felt that the Child would be able to develop peer group relations from within it. The School also has a very effective peer mentoring scheme.
39. The Vice Principal said that they believed the Child would fit well into the current mix of children at the School. The Vice Principal told the Tribunal



that the School has a significant cohort of children with ASD (approximately a third of the pupil population). The Vice Principal acknowledged that all of the children attending the School would be recognised as having social, emotional and behavioural difficulties. The Vice Principal said that these difficulties frequently resulted from ASD difficulties or difficulties linked to ADHD.

40. Group E has a Class Teacher and 2 teaching Assistants, one of whom is a Higher Level TA with previous experience of working in a school for children with ASD. The Class Teacher has a central role in pastoral support for the boys in the Group and each morning the Group will meet with the Class Teacher to run through the day and to address any concerns that any of the Group may have so that issues are identified quickly and resolved quickly. This session is also used to work on communication skills. The Group moves around the Key Stage 3 – 4 building accompanied by the Group TA's. The Vice Principal said that Teachers work during unstructured times so that the children have access to support at all times. The Vice Principal talked the Tribunal through the current timetable for Group E.
41. The Vice Principal said that all staff have intensive training in the use of Therapeutic Crisis Intervention to address any difficulties that arise around behaviour. The model is well regarded. It uses de-escalation techniques in the first instance to manage problems. Physical intervention is sometimes used in response to more serious incidents, if it is required. The Vice Principal told the Tribunal that of the 50 children presently in the School approximately 11 have exhibited behaviour that has required physical intervention. The Vice Principal said that over the past 3 years no pupils have been excluded. Once a baseline of behaviour is restored the incident is reviewed so that the child is helped to learn more appropriate ways of dealing with difficulties.
42. The Vice Principal said that in addition, throughout the school day staff will use less intensive behaviour management techniques to prevent difficulties arising. The Vice Principal offered examples of this, such as, seating arrangement in class, in class support with work and close proximity and availability of staff.
43. The Vice Principal told the Tribunal that since the School Estyn Report of 2006 the School has been making year on year improvements in the teaching and in the support it offers pupils. This is one of the focuses of the School and the improvements made are reflected in the yearly Estyn Monitoring Reports (copies not provided) and in improvements in pupil achievement. The Vice Principal said that they believed that the School was able to meet the Child's academic needs.
44. The Vice Principal said that all 11 teaching staff are qualified Teachers. The Head has a Masters Degree in SEN and the Vice Principal has a Masters Degree in ASD. There are 14 TA's throughout the School. The School presently offers GCSE courses at Key Stage 4 in 8 of the Core and

Foundation Subjects. All teaching to GCSE is delivered within school. The Vice Principal said that GCSE results are improving and explained that the reason why there appeared to be no scores in English for the 2012 cohort was that these children may have taken the examination early.

45. In regard to access to Speech and Language therapy provision and Occupational Therapy provision The Vice Principal told the Tribunal that the School works with therapists appointed by Local Authorities in line with the provision identified in individual Statements. The School does not have its own therapists on site. The School has considerable experience of working with children with social communication difficulties and Teachers and TA's are trained to deliver social communication programmes and the School runs social communication groups. The Vice Principal also told the Tribunal that the School runs a very effective Autism Awareness Group.
46. The Vice Principal said that the School has access to advice from a Clinical Psychologist and also from an Educational Psychologist. The School generally adopts a consultative model with both experts. This means that they do not generally work directly with children but offer advice to the School as to how children can be best supported. The School also has an arrangement whereby third year Psychology students from a local University work with pupils at the School under the supervision of the Clinical Psychologist. The Vice Principal told the Tribunal that the School has considerable experience of working with CAMHS across Wales. The Vice Principal said that at the present time the School is working with CAMHS in respect of about 10 – 15 children.
47. The Specialist Teacher told the Tribunal that the CDU (known as HQ) at School B is staffed by them self and 3 TA's. The Specialist Teacher said that there are presently 12 children attending the Unit. The Specialist Teacher said that the Child would have additional support from a dedicated TA to support transition and because the Child would take the Unit over the usual limit of 12 pupils. The qualifications and experience of The Specialist Teacher and Team are set out in the papers. The profile of the children attending the Unit, including cognitive assessment scores and types of special educational, is also set out in the papers. Details of the time that each child spends in mainstream classes is also recorded in the papers.
48. The Specialist Teacher told the Tribunal that the Unit is well set up to cater for the needs of children with ASD. The Unit adopts a TEACHH approach. There are very clear routines and structures to the day. Pupils have a visual timetable and during unstructured time the pupils have access to interest boxes.
49. The Specialist Teacher told the Tribunal that they had not met the Child directly as yet but had read all of the papers concerning the Child. The Specialist Teacher said that the suggested transition arrangements submitted by the Local Authority would form the basis of the plan that would be put in place to support the Child into the Unit and then on into mainstream

classes with support. The arrangements would need to be discussed with the Child and with the Parents. The plans were based around The Specialist Teacher experience of what had worked in other cases.

50. In response to questions concerning how the Unit supported pupils who needed to remain there full time, and how the Child would be supported in the Unit the Specialist Teacher told the Tribunal that work would be set by the relevant subject teachers and the child would generally be taught either by the Specialist Teacher or by one of the TA's or by the Subject Teacher if they were available. The Specialist Teacher said that there was no prescribed plan.
51. In response to questions concerning how the Child would be supported to deal with anxiety concerning mainstream School and sensory difficulties the Specialist Teacher said that all students at the Unit have additional problems to their ASD. The Specialist Teacher said that staff take steps to desensitize children to the school environment and we were referred to the use of a scaled response system to help children cope with things that they found difficult
52. The Specialist Teacher told the Tribunal that a Speech and Language therapist attended the Unit on a weekly basis to assess children and advise on support. The Specialist Teacher said that children at the Unit could be provided with direct support if it were needed. The Specialist Teacher explained that social communication teaching and strategies are embedded in the work of the Unit. The Specialist Teacher said that a SULP is used in the Unit for a minimum of 2 hours per week. The Specialist Teacher also said that the School runs Social Use of Language Groups. The Specialist Teacher said that the Unit had experience of working with Occupational Therapists where a Statement made provision for it. In addition the Unit had regular support visits from the Educational Psychology Service and it had experience of working closely with CAMHS.
53. The Specialist Teacher said that they believed that School B could meet the Child's needs. The Specialist Teacher said they were not able to say exactly what was different between School B and School C but felt that just because things had not worked there it did not mean integration should not be tried again. The Specialist Teacher went on to say that the situation of the 2 Units within school grounds was different, the de-escalation strategies used at School B were very effective and the School also had the benefit of hindsight and could consider what had gone wrong and undertake a risk reduction assessment.
54. The Educational Psychologist told the Tribunal that they were of the view that children with ASD tended to have very different profiles to children with SEBD. ASD children responded to routine and structure and rules and tended to be less street wise than children with SEBD. There was a risk that ASD children would find the rule breaking of children with SEBD difficult to cope with and that an ASD child would find it difficult to make a positive

friendship with a child with SEBD. In their view behaviour management strategies for children with ASD were very different to those for children with SEBD and children with ASD did not tend to do well in SEBD provision.

55. As the Local Authority was not contesting this case on grounds of cost no evidence concerning the costs of either of the placements proposed by the parties was provided.
56. In line with the agreement of the parties the Parents Representative has filed with the Tribunal and served upon the Local Authority written closing submissions dated October 2012. The Local Authority also had the opportunity to file and serve written closing submissions but the LA Representative indicated at the hearing that the Local Authority did not propose to do this. No written submissions have been received by the Local Authority therefore.

### **Tribunal Conclusions and Reasons**

57. The Tribunal considered the written evidence submitted by the parties and the evidence given at the hearings. The Tribunal considered relevant provisions of the Education Act 1996 and supporting Regulations and relevant provisions of the Special Educational Needs Code of Practice for Wales.
58. The Tribunal wished to thank the Child for attending part of the afternoon session of the hearing in October 2012 and for being prepared to talk to the Tribunal Panel. Panel Members found the talk to be useful. In addition to the above matters the Tribunal has taken what the Child said into account in reaching the decision.
59. It is very much to the credit of both parties that they have been able to reach considerable agreement concerning the description of the Child's special educational needs. The terms of the agreement are recorded in an amended Statement which is attached to this Decision and is marked Appendix A. The Tribunal endorses the agreed wording and orders that the Child's Statement of Special Educational Needs should be amended to reflect this.
60. The Tribunal noted a typographical error at line 32 of the Working Document of October 2012 in that "partially" should read "particularly." The parties agreed that this error should be corrected. This is therefore reflected in the amended Statement at Appendix A.
61. The Parties were in agreement that the Child has poor organisational skills. The LA Representative therefore agreed that references to this issue in Part 2 and 3 of the Working Document should be included in the Child's amended Statement. This is therefore reflected in the amended Statement at Appendix A.

62. Whilst the parties agreed that the Child has problems with social communication skills and pragmatic understanding the wording relating to the severity of these problems was not agreed. Based on advice the Parent considers that the words “very” and “severe” should be included in the description at line 31 of the Working Document and argued that the phrase “contrasting between concrete Expressive Language” should also be included. The Local Authority took the view that this was not necessary.
63. The Tribunal decided that the additional words “very” and “severe” should be included in the Child’s amended Statement. In reaching this decision the Tribunal took into account what was said in the Psychologist’s report on the issue and it also bore in mind the evidence from the Consultant which appeared to be supportive of the position taken by the Educational Psychologist on this point. The Tribunal did not however agree that the additional phrase set out at line 37 should be included. In the view of the Tribunal this phrase did not make sense and it did not add anything additional to the summary of the Child’s difficulties. These decisions are reflected in the amended Statement set out at Appendix A.
64. The other area of dispute between the parties lay in the description of the Child’s behaviour and emotional difficulties. The Parent is seeking inclusion of wording to reflect that they feel that the Child has “poor self control” and difficulties in managing feelings of “anger.” The Parent is also seeking the inclusion of references to the Child as having difficulties with “challenging behaviour” and as having difficulties in “comply(ing) with acceptable adult requests”. The Local Authority does not accept the Parent’s view and therefore disagrees that the wording should be included in the Child’s Statement. The arguments of both parties on this are outlined in the Facts.
65. After very careful consideration the Tribunal decided that the considerable evidence it had read and heard supported the view that the Child has difficulties with self – control and presents with challenging behaviour at times and that the Child has difficulty in complying with acceptable adult requests. The Tribunal decided therefore that these descriptions should be included in Part 2 of the Child’s Statement. The Tribunal concluded that the description of the Child as having difficulties in managing feelings of “anger” was too limited. It felt that the evidence pointed to the Child having problems in managing feelings more generally and not just the Child’s feelings of anger. The Tribunal decided that the phrase “managing feelings” should be included in Part 2. These decisions are reflected in the amended Statement set out at Appendix A.
66. In reaching these decisions the Tribunal felt that the evidence of the Consultant on these matters was very compelling. The Consultant has direct knowledge of the Child and in the view of the Tribunal the evidence was measured and very helpful. They described the Child as having difficulties with emotional control which supports the description of the Child as having poor self control and as having difficulties managing feelings. The Consultant also gave very clear evidence that the Child is stubborn and does

not respond well to being told what to do, which supports a description of the Child as having difficulties in complying with reasonable adult requests. Further, in regard to the issue of challenging behaviour, the Consultant acknowledged that the Child had not evidenced such behaviour when working with them and other members of the CIT Team but the opinion was that in a situation that the Child finds difficult there was a risk that the Child would behave in this way.

67. The Tribunal did not accept the Local Authority's case that the Child does not have challenging behaviour and difficulties with self control because the Child did not seek to challenge by "acting out" either in school or in the Child's more recent involvement with the Miskin Project or with "Detached Youth." The Tribunal took the view that challenging behaviour and poor self control can equally be demonstrated by behaviour that is withdrawn and/or none complaint/defiant. The Tribunal considered that there was clear evidence to show that the Child acts in this way when the Child finds situations difficult. For instance the Child has been refusing to go to school since October 2011. The Child has refused to do work set by School C. The Child has only recently engaged with home tuition and in this context the Parents reported that the Child refused to write in one of the recent sessions because the Child found the work difficult. Further, whilst the report from the Miskin Project of September 2012 is generally positive about the Child's engagement with the Service it does state that the Child "has presented challenges on occasion, particularly in relation to not wanting to wear protective clothing during activity."
68. The Tribunal also felt that the agreed description of the Child's behaviour as set out in the Working Document addresses the Local Authority point that the Child has a tendency to exhibit more overt forms of challenging behaviour and lack of self control in the home setting.
69. In regard to the issue of whether or not the Child should be described as being "hyper" sensitive to noise, touch and smell and whether the Child is also hypersensitive to "vestibular information" the Tribunal concluded that the evidence pointed to the fact that the Child is hypersensitive to noise, touch and to smell but the Tribunal did not consider that the evidence pointed to the Child being hypersensitive to vestibular information. The Tribunal agreed with the Local Authority that the Child's ability to engage well in outward bound activities did not suggest that the Child had hypersensitivity to vestibular information. These decisions are reflected in the amended Statement at Appendix A.
70. The Tribunal noted at line 141 of the Working Document that it states that "The Child is not on any medication". Given the evidence that the Tribunal heard from the Consultant on the matter this is no longer correct. The Tribunal decided that the sentence should be removed from the Statement as it is now factually incorrect and it could be misleading.

71. In the written closing submission the Parent Representative asked the Tribunal to consider whether the Child's Statement should be amended to reflect the Consultant's diagnosis of Anxiety Disorder. This is not something that the Representative raised during the hearing and so the Local Authority has not had an opportunity to consider this matter or to make any representations to the Tribunal. In view of this the Tribunal has decided that it would not be appropriate for it to make any significant change at this point. The Tribunal noted that Part 2 of the Working Document already makes reference to the Child having difficulties with anxiety and so the Tribunal felt that people referring to the Statement would at least be made aware that this is a concern.
72. Again, it is very much to the credit of both parties that they have been able to reach considerable agreement concerning Part 3 provision in the Child's Statement. The terms of the agreement are recorded in the amended Statement at Appendix A. The Tribunal endorses the agreed wording and orders that the Child's Statement of Special Educational Needs should be amended to reflect this.
73. In relation to the outstanding issues concerning the objectives in Part 3 of the Child's Statement the Local Authority agreed to include an objective to improve the Child's organisational skills at line 171 of the Working Document. In regard to the disputed objectives the Tribunal decided that the reference to "using the Child's concrete expressive language skills" to develop functional communication at line 167 should not be included. The Tribunal decided that the additional disputed objectives relating to the development of greater self control at line 173, the need to attend and comply with acceptable adult requests at line 174 and the need to reduce any challenging should be included. These decisions follow on from the conclusions reached by the Tribunal in relation to corresponding elements in Part 2 of the Child's Statement, as explained above. The decisions are reflected in the amended Statement at Appendix A.
74. In regard to the dispute concerning the provision required to address the Child's communication difficulties the Tribunal considered the recommendations made by the SALT very carefully. The Tribunal noted the conclusion that the Child has severe social communication difficulties and pragmatic language difficulties. The Tribunal also noted that the SALT indicates that the Child has no difficulties in their speech. The Tribunal noted the recommendation of the SALT that the Child requires a "Speech and Language therapy programme" designed by a qualified Speech and Language therapist on a termly basis. The wording sought by the Parents reflects exactly the wording recommended by the SALT. The wording sought by the Local Authority is to the effect that the Child requires a "social use of language programme" which is designed and overseen by a Speech and Language therapist. In the view of the Tribunal the description being proposed by the Local Authority is preferable as it more accurately reflects that the emphasis in the programme will be upon the Child's social communication and pragmatic language skills rather than on the Child's

speech. The Tribunal considered on the evidence it heard from the Consultant and Specialist Teacher that either School would be able to deliver this programme under Speech and Language Therapist guidance and therefore the disputed wording relating to where the provision should be delivered would need to reflect the decision that the Tribunal made in relation to Part 4 of the Child's Statement. The amended Statement at Appendix A reflects these conclusions.

75. It is accepted that the Child needs to attend a social communication group. Based on the advice of the SALT, the Parent considers that the Child should attend the group x2 per week for no less than 35 minutes. The Local Authority considers that the duration and frequency of the provision should be left to the professional discretion of the Therapist overseeing the group. The LA Representative pointed to the fact that at School B this work is carried out for a minimum of 2 hours per week. The SALT did not explain the reasons for the specification of provision in the report and they did not have the opportunity to consider the provision being recommended in context. The Tribunal therefore has some sympathy for the approach being suggested by the Local Authority. However, the Tribunal considered that the phrasing proposed by the Local Authority was too open-ended. It did not provide sufficient specificity to enable the parties to be clear as to how much provision the Child would receive. In view of this, the Tribunal decided that it should order the specification recommended by the SALT. In effect this would set the minimum level of provision required. The Tribunal did not accept that it was necessary to specify the amount of additional time that a Speech and Language Therapist should spend in supporting the group. The amended Statement at Appendix A reflects this conclusion.
76. The Tribunal did not accept that it was necessary to make it mandatory for the Speech and Language Therapist to attend the annual review. Instead it preferred the wording suggested by the Local Authority which states that the therapist should "aim to attend" the annual review. The amended Statement at Appendix A reflects this conclusion.
77. In regard to the SALT's recommendation, the Tribunal was of the view that this provision was not necessary. The Tribunal was of the view that in the context of a placement in a CDU or a Special School that is approved to meet the needs of children with ASD the provision of a programme together with attendance at a social communication group, all of which would be overseen by a qualified Speech and Language therapist, was sufficient provision to address the Child's needs. The Tribunal did not see how direct provision would add anything more. The SALT does not explain the recommendations in any great detail and the Parent Representative was not able to assist the Tribunal in this regard. The Tribunal noted that the recommendation had been made without the SALT having had the opportunity to visit either of the Schools under consideration. The Tribunal was also concerned that the provision would result in the Child being withdrawn from lessons. The Tribunal decided not to include the provision in



Part 3 of the Child's Statement therefore. The amended Statement at Appendix A reflects this conclusion.

78. The Tribunal did not accept the recommendation that the Child requires a school environment where advice and support from a Clinical Psychologist would be available. The LA did not explain the basis upon which they had arrived at this conclusion and neither did they explain precisely how this would be applied to the Tribunal. The Tribunal heard evidence from the Consultant about how School A generally adopts a consultative model with the Clinical Psychologist and it noted that the Consultant did not mention the involvement of the Clinical Psychologist specifically for the Child when they gave evidence as to how School A would meet the Child's needs. The Tribunal did not consider that this was necessary provision for the Child and it decided not to include the provision in Part 3 of the Child's Statement. The amended Statement at Appendix A reflects this conclusion.
79. Many of the remaining areas of dispute between the parties in respect of Part 3 are placement sensitive, and are linked to and describe the provision available at either School A or School B. The Tribunal's views on these matters are set out below and they are linked to the conclusion that the Tribunal has reached concerning the appropriate school placement for the Child.
80. In regard to the issue of placement the Tribunal carefully considered the evidence it had received from both parties and it came to the conclusion, having regard to s. 9 of the Education Act 1996, that it should order that a day placement at the NCH Action for Children School A be named in Part 4 of the Child's Statement. The amended Statement at Appendix A reflects this view.
81. Whilst the evidence from School B's Estyn Report and its prospectus demonstrate that School B is a good school and the provision in the CDU at the School is noted in the Estyn report to be a particular area of strength the Tribunal was not persuaded on the evidence that the School could meet the Child's particular needs.
82. The evidence given by the Parents and by the Child demonstrates that the Child found it difficult to cope in mainstream classes whilst the Child attended the CDU at School C in September - October 2011. In addition the Child has now been out of school for a considerable time and is likely to find mainstream classes an even greater challenge than before in 2011. Further School B has a considerably larger pupil population than School C and this is likely to present additional anxiety for the Child because the Child finds noisy situations and large groups of people difficult. The Tribunal took the view therefore that the Child is likely to need to stay in the CDU on a full time basis initially and for some considerable time thereafter it felt that the Child is likely to need very high levels of access to the Unit, if not full time access.

83. The CDU provision at School B is predicated on the basis that the children attending the Unit will access a significant percentage of mainstream classes. The list of pupils currently placed at the Unit shows that most of the pupils are included in mainstream classes for 50% or more of the time.
84. The evidence of the Local Authority was that notwithstanding this general position it was possible for children to remain within CDU provision full time if this is what was required. However, whilst the Specialist Teacher accepted that this was a possibility and referred to a case where a particular child has recently needed to return to the CDU full time, after having been integrated into mainstream classes, the educational provision on offer to a child placed entirely in the CDU appeared to be ad hoc and it was not clear how a child's social needs would be addressed in the setting. Moreover, notwithstanding the assurance that it would be possible for the Child to attend the Unit full time, neither the Local Authority nor the Specialist Teacher were able to provide the Tribunal with a coherent plan which set out how the Child's academic and social needs would be addressed in these circumstances. It seemed to the Tribunal that the ad hoc and none specific arrangements that the Specialist Teacher described would be applied to the Child. In the view of the Tribunal such arrangements were not capable of meeting the Child's academic or social needs.
85. The Specialist Teacher explained to the Tribunal that the proposals for transitioning the Child into the CDU were based on experience of what had worked with other children and it was explained that in line with good practice they would need to be agreed with the Child and Parents. The Specialist Teacher has not met the Child and so the plans are based purely on reading of the papers. As a result the plans put forward by the Local Authority are provisional and are not specific to the Child's and do not take account of the Child's individual circumstances. The Tribunal thought that the example timetable for the Child illustrated this point in that it identified PE as being the lesson in which the Child would integrate into mainstream class with support notwithstanding the fact that it had not been possible to integrate the Child into this lesson at School C.
86. The transition plan as set out in the papers proposes a 2 week period during which the Child will begin to visit School B and gradually be introduced to the School and into the CDU. Thereafter it suggests that the Child will attend the CDU full time and from the period 8 – 16 weeks the Child will be gradually introduced into some lessons with support. The plan seems to assume that the Child will integrate relatively quickly into mainstream provision and makes no provision for the possibility that this will not happen.
87. In addition the plan appears to take no account of the fact that the Child does not want to go to the School and has categorically stated that they will not attend. It presupposes a high degree of cooperation from the Child which in the view of the Tribunal is unrealistic. Further, it does not identify any motivating strategies that might overcome the Child's reluctance to attend or make any contingency plans in the event that the Child's cooperation is not

forthcoming. Neither the Local Authority nor the Specialist Teacher appeared able to address these concerns when they were raised at the hearing.

88. Given the above and taking into account the evidence of the Consultant that it is likely to be a significant “challenge” to secure the Child’s attendance at School B the Tribunal felt that there was a very real prospect that the introduction of the Child into School B would not work.
89. The Child has now been out of school for a considerable period of time. It is essential that the Child successfully returns to education as soon as possible. In the view of the Tribunal, for all of the reasons set out above, the plan to introduce the Child into School B is unlikely to achieve this.
90. The Tribunal did not accept the Local Authority’s argument that School A was inappropriate for the Child. On the contrary, having heard detailed evidence from the Consultant and having had the opportunity to question the Consultant closely the Tribunal came to the conclusion that the concerns of the Local Authority were not borne out and it concluded that the School would be able to meet the Child’s needs both academically and socially.
91. School A is approved to admit children with ASD and Asperger’s Syndrome as well as children with social, emotional and behavioural difficulties. The evidence of the Consultant was that approximately a third of pupils at the School at the present time have ASD or ASD traits. School staff have met with the Child and the Parent and the Child has attended a 3 day assessment at the School. The School has confirmed that it considers that it is an appropriate placement for the Child and the Consultant who has met with the Child and the Parents, confirmed that the School could meet the Child’s needs both academically and socially at the hearing. The Consultant told the Tribunal that in their view School A would be a suitable placement for the Child.
92. The Tribunal heard evidence from the Consultant that they felt that the Child did not need any further transition period into School A because the Child had already successfully completed a 3 day assessment at the School. This meant that the Child would be able to start at the School straight away.
93. The Child has been assigned to a particular Key Stage 3 Group and the Tribunal heard detailed evidence from the Consultant that indicated that the other pupils in the Group have similar needs to the Child and that most of the Group is of average ability or above. The Consultant anticipated that the Child would be well placed to establish peer relationships from within the Group and would be provided with an appropriate degree of intellectual challenge.
94. The Tribunal also heard detailed evidence about the behaviour strategies adopted by the School to cope with pupils behavioural difficulties. The Tribunal was impressed by the techniques used by the School. The Tribunal

also looked at the academic aspect of the School and it was satisfied that the School had made significant improvements in recent years to the academic curriculum such that it would be able to make suitable provision for the Child within the School. The Tribunal was also satisfied from the evidence given by the Consultant and from the Vice Principal that it would be possible for the School and the CIT Team to work together to provide support for the Child if this was required.

95. The Tribunal took into account the fact that the Child has attended the School for a 3 day assessment and is saying that they want to go there because it is small and there are lots of staff and they feel comfortable. Whilst not determinative of the issue of whether or not School A is suitable the Tribunal felt that the Child's views were important. The views are based on the Child's actual experience of the School, albeit for a short period of time. They suggest that the Child feels they can cope with the behaviour of other pupils in the School and with the methods that the School uses to manage pupils.
96. The Child's views are also significant in that they mean that the Child is likely to be motivated to attend School A. In the view of the Tribunal this suggested that an immediate start at School A was realistic and that the placement stood a significantly greater chance of success than that proposed at School B.
97. The Tribunal recognised that there would be times that the Child may experience difficulties at School A but on the evidence it had heard from the Vice Principal the Tribunal felt the School would be able to work through these difficulties with the Child to ensure that the commitment to the placement is maintained.
98. As the Local Authority chose not to raise an issue as to the respective costs of the proposed placements and no information was provided by either party concerning the issue the Tribunal did undertake any analysis as to whether a placement at School A would constitute unreasonable public expenditure. In any event, having found that School B could not meet the Child's needs and that School A could do so the Tribunal concluded that a placement at School A would not amount to unreasonable public expenditure.
99. It follows from the conclusion that School A should be named in Part 4 of the Child's Statement that the sections of Part 3 of the Working Document which describe provision at School B should not be included in the Child's Statement and that those elements which describe provision at School A should be included. The amended Statement at Appendix A reflects this.
100. The Tribunal would like to take the opportunity to thank the parties and their witnesses for the helpful and cooperative way that they have conducted themselves in the course of these proceedings.

101. The Tribunal would also like to take the opportunity to comment on how impressed it was with the level of support being delivered to the Child by the Consultant and their CIT Team.

**Order:**

The appeal was upheld on part in relation to Parts 2 and 3 of the Child's Statement and in whole in relation to Part 4.

- i. The Local Authority is ordered to amend the Child's Statement in accordance with the amended Statement at Appendix A of this Decision.

**Dated October 2012.**