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DECISION

Date of Birth:	2006	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	Local Authority	
Date of Hearing:	2013	
Persons Present:	The Parents	<i>Parents</i>
	The Child	<i>Child</i>
	LA Representative	<i>Solicitor</i>
	LA Witness	<i>Practitioner</i>
	LA Witness	<i>Educational Psychologist</i>

Appeal

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

Preliminary

The LA Representative made an application for submission of late evidence, pursuant to Regulation 50 of the Tribunal Regulations 2012. The application related to an email dated July 2013 from the Head of the Child's current placement, rebutting comments made by the Parents in the case statement.

The Parents did not object to the application on the basis that they would be allowed to comment on the content of the email if it was admitted in evidence. The tribunal considered the application and, noting that the email was dated July 2013, and had not been disclosed to the Parents or the Tribunal in advance of the hearing, concluded that it did not meet any of the criteria in the regulations for submission and that its exclusion did not present a serious risk of prejudice to the party seeking to rely on it.

The application was refused.

The LA Representative further made an application for a solicitor, to be permitted to attend the hearing as an observer. The Parents did not object and the application was allowed.

Background

1. The Child is 7 years old and has a diagnosis of autistic spectrum disorder (ASD) and displays many of the difficulties associated with the disorder particularly in the areas of social communication and interaction, organisation and independence skills. The Child was a pupil at School A, a maintained mainstream primary school where the Child attended the observation class. The Child was a pupil there from 2009 and was diagnosed with ASD about three months later.
2. The Parents decided in 2011 that the Child required ASD specific and specialist provision, and requested that the LA arrange an assessment of the Child's needs. A statutory assessment was undertaken and a statement of SEN issued in April 2013. The LA sought to name, for the Child's Key Stage 2 placement a Communication Resource Base at School B.
3. The Parents appealed against the contents of the statement seeking amendments to Parts 2, 3 and 4 of the statement.
4. The LA reviewed the contents of Parts 2 and 3 in the course of the appeal and included within the description of the Child's needs and provision most of the amendments suggested by the Parents. Only one issue remained for consideration in each part of the statement by the day of the hearing.
5. At the start of the hearing, the tribunal met with the Child, the Parents and the LA representative, in an informal meeting in the hearing room. The Child told the tribunal that they had been to both Llangrannog and to France on holiday and that the Child would be attending a new school after the summer holiday.
6. The LA acknowledged that School C, the school of parental preference, would be able to make appropriate provision for the Child although there were some reservations regarding some aspects of the provision which led the LA to consider that the provision they proposed was better than that at School C. The LA's opposition to naming the school of parental preference was on the basis that a placement there would represent an inefficient use of its resources.

Evidence

7. The Parents sought amendments of Part 2 to include a description of the Child's need for consistency "in schooling and in safety". They explained that change was a major issue for the Child and that in order for the Child to attain to their full potential, then all change should be minimised and consistency imposed on all aspects of the Child's education. They also expressed their concern about the Child's lack of perception of danger and the risk posed to the Child.

8. The LA Representative indicated that they did not perceive any difficulty with the proposed amendment but suggested that it was potentially narrower in defining the need for consistency than the wording used by the LA within Part 2 of the statement.
9. In Part 3, the Parents sought to have included as provision a specific bullet point setting out as necessary provision for the Child's motoring during break and lunch times and any other unstructured times to avoid placing the Child at risk of bullying or placing other children at risk of retaliation or challenging behaviour from the Child. They relied on the evidence set out in the observation report of a Educational Psychologist of the Child's reaction to another child's failure to abide by class rules and to sit cross legged, leading eventually to that child being hit by the Child.
10. The LA Representative suggested that there were already two bullet points that would offer the necessary provision for the Child but did not particularly object to the inclusion in Part 3.
11. The main issue for the tribunal was the question of whether appropriate provision for the Child could be made at School B resource base or whether the Parents' case that appropriate provision could not be made was borne out. A Senior Practitioner in ASD gave evidence about the provision and how it would be delivered for the Child.
12. The resource base is a satellite class from the local special school and is funded by that school. The Base has until July, formed part of School B but in September 2013 will relocate to a Junior School and will offer places for eight pupils with diagnoses of ASD within the Key Stage 2 age range. Currently designated a communication resource base, the LA's longer term strategy is to convert its existing four communication resource bases into ASD resources, and seven of the eight pupils in School B currently have a diagnosis of ASD. The move will take the Base out of one of the largest primary schools in the borough to a smaller school, but larger accommodation. It has not yet been given its new title.
13. The Base has a high level of resourcing, consisting of a specialist teacher and two support assistants (SAs) with additional qualifications in both special educational needs and speech and language therapy, equivalent to a Speech and Language Therapy Assistant. The base has input equivalent to one day a week from a speech and language therapist, who assesses, devises programmes and models delivery for the SAs who offer the full package of language support on a daily basis in the base. The provision on a daily basis would be a significant improvement on the current delivery twice a week. The delivery of provision is individualised and is very child led, with the staff monitoring and assessing each new pupil closely to decide on the provision delivery required to meet their needs. The evidence given was that a new pupil will receive full time one to one support for the initial period to assess their areas of strength and weakness and to identify appropriate provision for them within the base. The pupils can remain on a full time basis within the base or be taken to the school for integration

sessions. Mainstream integration is available at the child's pace and is tailored to each individual child's need and pace. Initially, it was not envisaged that the Child will have mainstream integration immediately and the Child is likely to require adult support to access any integration into mainstream. From September 2013, the base will have 8.5 pupils including the Child and from October 7.5 as a pupil will move out of the area to live. There will be one other new pupil joining the base in September 2013.

14. Should the base conclude that the Child required additional full time support, for instance, individual support to support integration into mainstream, then an application for that support can be made to the LA, who are likely to look favourably upon the recommendations made.
15. The relocation is to a school which also hosts a moderate learning difficulties resource base which would share toilet facilities with the Sunshine Class. The school therefore has previous experience of integrating children with special educational needs into mainstream.
16. Most of the pupils are low functioning with the majority functioning at the P-scales or low National Curriculum levels. Not many within the base are using better language than the Child. Six pupils are boys and two are girls.
17. The Parents were concerned that they had been unaware until the hearing that the Resource base was in fact a satellite class. They expressed their view that the LA had been unable to show them even the classroom within which the Base would be physically located, given the late finalisation of the arrangements. They had both visited the existing base at School B and expressed concern about the physical size of the class, given that the Child is already large for their age and will continue to grow. The Parent was particularly exercised by the fact that the quiet area in the class was a tented box, concluding that such an arrangement was not appropriate for the Child.
18. The Parents' main concern was that despite the observation class offering what provision they could to address the Child's needs, the progress the Child had made was limited and they perceived the Child's social progress as having been hindered within the mainstream environment. The Child's significant social communication difficulties mean that the Child is unable to express their difficulties and does not have an awareness of them self and others. They were particularly concerned that the Child is vulnerable to bullying and that the Child will injure another child by lashing out in response to provocation and will be blamed for doing so.
19. The other concern expressed by the Parents was that the Child's inability to adapt to change, and the very long time that the Child takes to build up relationships with others, would mean that within a few years the Child would be required to change school placement again, on the basis that the Resource base is only for key stage 2 children, and future placement was not a foregone conclusion. The LA had described the Child as too able to

attend School D, yet in need of something more specialised than mainstream with support.

20. The LA Educational Psychologist expressed the LA's concerns about certain aspects of the provision at School C as being suitable for the Child. Most of the children at School C display a lower level of cognitive functioning than the Child, and the Child's opportunities for mainstream integration would be very limited or absent. The Child would be presented with peers, some of whom have very challenging behaviours and very few with language at a level as high as the Child. If it was deemed appropriate to integrate the Child into mainstream, it would be to a school off the site and within the Local Authority, outside the Child's home area, preventing the Child from accessing friendship groups locally. Finally, the Educational Psychologist expressed concerns that the provision at School C will also change over time and become more like that within the LA's own provision at School D. They expressed their view that a level of structured integration for the Child has worked and that the Child has made progress despite the Parents' concerns. It was their view that the Child should continue to access good role models in mainstream.
21. The Parents expressed their concern about the absence of a dedicated area where the Child could retreat and the lack of physical space. It is their view that the Child requires all members of staff to have expertise and experience in ASD and teaching pupils with ASD. The Child is taking a very long time to build up relationships which means that by the time the Child has reached the stage of trusting staff and pupils in the base, it will be time to move on and change to a secondary placement.
22. The LA stated that behaviours exhibited by the Child were not beyond the experience of the staff within the base and that many of the difficulties that the Child exhibited were common to pupils with a diagnosis of ASD. They acknowledged however that the Child's long term provision had not been identified and that it was not yet decided that the Child might not need to attend School C at some later date.
23. The cost of the provision at the Resource Base was described as being £11 039 per annum. The cost did not include an age weighted pupil cost and did not appear to reflect the cost of the staff, who were described as being a qualified teacher with one SEN point at £44 200 per annum and the cost of two LSAs at £34,800 each including on costs. The total staffing annual costs divided by the number of places available did not reflect the individual placement cost quoted by the LA and did not include any speech and language therapy provision although the therapist is also employed by the LA. The cost of transport to the base would be in the region of £20 per day for a dedicated taxi and escort, with the cost of transport to School C in the region of £70 per day.
24. The recoupment cost of the place at School C was quoted as £26 000 per annum for a standard day place, with no indication that the Child would require an enhanced place.

25. The Parents took the view that a place at School C offered better provision for the Child than that at the resource base because it would offer a calm and contained environment for the Child, with all of the teaching by ASD specialists as well as opportunities to access music therapy, a sensory room, school trips, which the child had been denied previously and a peer group with similar difficulties where the Child would not be different.
26. The LA submitted that the difference in cost between the base and School C would represent an inefficient use of its resources.

Tribunal's Conclusions with Reasons

27. 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:
28. The LA did not oppose the inclusion of the additional bullet points in Parts 2 and 3 and we consider that their inclusion adds to the clarity and specificity within the statement and direct that they should be added to the statement.
29. We considered whether the resource base formerly at School B could make appropriate provision for meeting all of the Child's identified needs. We accepted the LA's submission that the Child's difficulties were not outside the range of behaviours and difficulties commonly exhibited by pupils with ASD, however our concern was about the provision that the Child is being offered within the base and the relocation of the base onto a new site where the school does not previously have significant experience of children with ASD. Whilst the school has previously integrated pupils with moderate learning difficulties, the inclusion of pupils with ASD is a significantly different exercise, especially when behaviours such as those exhibited by the child, who is loud and vocal, can be disruptive to the other pupils. Understanding the presentation of the condition requires advance training and preparation of the whole school staff, and we were not presented with any evidence that there had been significant forethought and preparation of the school for the arrival of the base. We conclude that whilst the base staff themselves may be well experienced and trained, the inclusion of a group of children with significant ASD requires the training of all the school staff to ensure their full acceptance within the school community.
30. There were issues arising from the Child's previous placement at School A which caused some concern, particularly the absence of any indication that the Child was set targets addressing the Child's particular difficulties with social communication and language difficulties, which have featured very clearly in the identification of the Child's difficulties. We accepted the evidence that the Child was receiving provision of a speech and language therapy programme twice a week, and agree that the Child requires that provision on a daily basis as proposed at the base. On the basis of the evidence, we have concluded however that the Child requires more

specialist input from teachers who have experience and training in ASD in all aspects of the Child's school life, and the evidence did not support the conclusion that that level of expertise would be available at the base from September 2013. We noted that the intention is that the Child would receive full time one to one input at the base, however the staffing ratios did not add up and if there were any other pupils requiring support to be integrated into mainstream, then the staffing levels quoted would not be sufficient to meet the needs of all the children in the base, bearing in mind that there would be two new pupils in September.

31. We have no doubt that with time, the base will become an effective part of the school and that training and further experience will ensure that it will in future, be appropriate provision for pupils in the Child's situation. At the moment however, there were sufficient concerns in our minds regarding the provision to conclude that it would not appropriately meet the Child's identified level of needs.
32. We accepted that the concerns raised about the provision at School C were also valid ones: The Child, because of the nature of their difficulties and particular strengths and weaknesses, is not a child who fits easily into standard educational provision and the placement at School C has to be a "best fit" at the moment. We did not accept the Parent's criticism of the "tented box" as being inappropriate and degrading for the Child, as many autistic units successfully use tents and similar structures as safe havens for pupils with sensory difficulties.
33. Because of our conclusion that the provision at the resource base would not appropriately meet the Child's needs, we do not need to consider the costs aspects any further.

Order

Appeal allowed in part.

It is ordered that the Local Authority do amend the statement of the Child as follows:

- i) In Part 2, by adding the clause "in the Child's schooling and safety" at the end of the 6th paragraph under the heading "Behaviour, Emotional and Social Development"
- ii) In Part 3, by adding a bullet point describing the Child's need for monitoring and supervision at unstructured times.
- iii) In Part 4 by replacing the existing with the following: "A special school placement. School A."

Dated August 2013