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## **DECISION**

<b>Date of Birth:</b>	1999	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Refusal to issue a Statement of SEN	
<b>Against the Decision of:</b>	Local Authority	
<b>Date of Hearings:</b>	September 2012 and October 2012	
<b>Persons Present:</b>	The Parents	<i>Parents</i>
	Child	<i>(morning)</i>
	Parents Witness	<i>Teacher</i>
	Parents Witness	<i>Educational Psychologist</i>
	LA Representative	<i>Director of Education</i>
	LA Witness	<i>Behaviour Support Service</i>
	LA Witness	<i>Educational Psychologist</i>

### **Appeal**

The Parents appeal under s. 325 of the Education Act 1996 against the decision of the Local Authority to refuse to issue a Statement of Special Educational Needs in respect of their Child. The Local Authority has issued a Note in Lieu of a Statement in respect of the Child dated March 2012.

The appeal was dealt with over 2 days. In September the Tribunal considered the preliminary issues of both parties, it heard directly from the Child and it took evidence from both sides. The Parties were given an opportunity to deliver closing submissions on a subsequent day but both sides decided to make speeches at the end of the first day. The Tribunal sat again in October to make deliberations and to make the decision.

### **Preliminary issues**

1. The Parents applied to admit a bundle of late evidence under Regulation 50 of the Special Educational Needs Tribunal for Wales Regulations 2012. The bundle had been received by the Tribunal on 5 September 2012.
2. The bundle consisted of copies of emails from the Behaviour Support Service since July 2012, a letter to the Support Service dated 3 September 2012, a letter and Pastoral Support Programme sent from the Head Teacher at School A to the Parents dated August 2012, part of a report from the Child's tutor (removed from the bundle at the hearing by agreement of the parties), copies of emails between the Assistant Director of Education and the Parent, a copy of a letter from the Education Inclusion

Service dated July 2012 to the Parents, a copy of a letter dated September 2012 to the Support Service and a Home Programme and Update Assessment Summary in respect of the Child of August 2012 and Assessment Summary of June 2012 from a Paediatric Occupational Therapist of the local NHS Health Board, a copy of summary of contact with the Child, undated, and unattributed detailing the involvement of the Support Worker in supporting the Child at a meeting with the Support Service and an Art Tutor in June 2012, a copy of notes from a meeting between the Parents and Director of Education, Behaviour Support service and a Principal Educational Psychologist, of May 2012 and a copy of note relating to provision and resources for ALN in the Local Authority undated.

3. The Local Authority indicated that it agreed to the admission of the documents. The Tribunal therefore decided to admit them under Regulation 50 (1) (a) of the Special Educational Needs Tribunal for Wales Regulations 2012.
4. The Parents applied to admit a copy of an up to date report from the Child's Tutor, dated September 2012. The Local Authority indicated that it agreed to the admission of the document. The Tribunal therefore decided to admit it under Regulation 50 (1) (a) of the Special Educational Needs Tribunal for Wales Regulations 2012.
5. The Parents also applied to admit a note of information that had been removed from the first draft of the Educational Psychology Report of December 2011. The Parents indicated that they wished for the Tribunal to consider this document alongside the first draft of the report. The Local Authority agreed to the admission of the document. The Tribunal decided to admit the note under Regulation 50 (1) (a) of the Special Educational Needs Tribunal for Wales Regulations 2012.
6. The Local Authority applied to admit a bundle of late evidence under Regulation 50 of the Special Educational Needs Tribunal for Wales Regulations 2012. The documents had been received by the Tribunal on 27 August 2012.
7. The documents consisted of draft minutes of a meeting between the Parents, Director of Education, and Support Service in July 2012, copies of letters dated August 2012 sent to a number of the professionals involved in the case requesting updates in respect of current involvement and a timeline for the completion of any outstanding assessments, a copy of the LA SEN Strategy, a copy of a letter sent to the Child from the Local Authority dated August 2012 inviting the Child to share their views and feelings with the Local Authority, and a letter to the Parents dated August 2012 from the Head Teacher of School A inviting them to a meeting to discuss the implementation of a Pastoral Support Plan in respect of the Child.

8. The Parents objected to the admission of the Local Authority SEN Strategy in particular as they considered that the Strategy could have been submitted to the Tribunal during the case statement period. They also felt that the requests to various professionals misrepresented their position in that they had not asked professionals to carry out further assessments of the Child and that the letter to the Child also misrepresented the position in regard to the Child's involvement with advocacy services.
9. The Tribunal decided to admit all of the documents under Regulation 50 (5) of the Special Educational Needs Tribunal for Wales Regulations 2012. The Tribunal took the view that the Local Authority's position would be seriously prejudiced if the documents were not admitted. In regard to the SEN Strategy it felt that this document would help to provide clarity concerning the issues in this case, and that therefore the interests of justice were best served by admitting it even though the Tribunal agreed with the contention of the Parents that the document could have been made available earlier in the current proceedings. The Tribunal noted the concerns of the Parents relating to the other documents and it concluded that it would take these concerns into account when determining the weight that should be attached to the documents.
10. The Local Authority also applied to admit into late evidence a bundle of documents that had been submitted to the Tribunal in September 2012.
11. The documents consisted of a document setting out provision and resources for ALN in the Local Authority, a summary of the meeting held in August 2012 between the parties, staff at School A and a copy of the letter from the Head Teacher of School A to the Parents concerning the Pastoral Support Plan meeting, a copy of School A Policy for Special Educational Needs, and a copy of School A Policy for the Inclusion Unit.
12. The Parents did not object to the admission of the provision and resources document but they did object to the admission of the policy documents in particular. They argued that the policies could have been made available within the case statement period.
13. The Tribunal decided to admit all of the documents under Regulation 50 (5) of the Special Educational Needs Tribunal for Wales Regulations 2012. The Tribunal took the view that the Local Authority's position would be seriously prejudiced if the documents were not admitted. In regard to the policies it felt that these documents would provide clarity concerning the issues in this case and that therefore the interests of justice were best served by admitting the documents.
14. The Local Authority made an application to admit copies of 2 weekly reports, from the Behaviour Support Team, concerning their involvement with the Child. The Parents did not object to the admission of the reports as evidence but they indicated that they did not agree with some of the

content of the reports as they did not present an accurate picture of how the 2 week period had gone.

15. The Tribunal decided to admit the 2 weekly reports under Regulation 50 (5) of the Special Educational Needs Tribunal for Wales Regulations 2012. The Tribunal took the view that the Local Authority's position would be seriously prejudiced if the documents were not admitted. The Tribunal noted that the Parents took issue with some of the content of the reports and this would be a matter that the Tribunal bore in mind when considering the weight to be attached to them.
16. The Local Authority also made an application to admit a written summary of the provision that School A proposed to make in respect of the Child to support reintegration to school. The document had not been shared with the Parents prior to the hearing and had not been submitted to the Tribunal before the hearing. The Director of Education explained that this document had been prepared in advance of the reintegration review meeting that was planned to take place in September 2012.
17. The Parents questioned why School A appeared not to have seen the Note in Lieu before now and why this information could not have been prepared and made available well in advance of the hearing.
18. The Tribunal decided to admit the summary under Regulation 50 (5) of the Special Educational Needs Tribunal for Wales Regulations 2012. The Tribunal took the view that the Local Authority's position would be seriously prejudiced if the documents were not admitted. The Tribunal considered that in the absence of any direct evidence from School A to the Tribunal regarding provision the summary provided the Tribunal with some understanding of how School A proposed to make provision to address the Child's needs and therefore this information was likely to be of significant assistance in seeking to determine the dispute between the parties.
19. After the hearing concluded in September 2012 the Tribunal were aware that the Parents sought to raise a concern that the summary admitted into evidence had been added to by the Local Authority. As this allegation was raised after evidence had been taken and the Parties had delivered their closing submissions it is not something that the Tribunal Panel has involved itself with at all and for the avoidance of doubt the Tribunal wished to make it clear that this has not been taken into consideration in the Decision. A copy of the summary is annexed to the Decision so that both parties are clear as to the content of the document that the Tribunal admitted into evidence.
20. The Parents had made a series of pre-hearing applications to the President of the Tribunal. The Parents raised a number of points as a result of these applications as preliminary issues.

21. In regard to changes that the Local Authority accepted had been made to the report of Educational Psychologist, the Parents were concerned that the Local Authority had not made the changes clear to them at the time they were made and they pointed out that had they not raised the issue then the changes would not have come to light. They told the Tribunal that they felt that the Local Authority's actions had caused confusion and were deceitful.
22. In addition, the Parents sought clarification from the Local Authority as to which of the drafts had been used by the Local Authority when it made the decision to refuse to issue a Statement of Special Educational Needs in respect of the Child. The Parents also sought to renew their application to exclude the Local Authority from the hearing on the basis that they considered that the Authority had failed to comply with the Presidential Direction of July 2012, which required the Authority to file with the Parents and the Tribunal a copy of the Educational Psychology Report highlighting amendments that were made to the report in January and February 2012.
23. The Director of Education accepted that changes had been made to the report. They explained that these changes had been made in good faith as part of the Local Authority's drive to write clearer and more concise reports. The Director indicated that none of the main substance of the initial report had been removed. The Director confirmed that it was the first draft of the report that had been used by the Authority when deciding whether or not to issue a Statement of Special Educational Needs in respect of the Child. As indicated above therefore the parties agreed that this was the document that should be considered by the Tribunal alongside the addendum note prepared by the Parents.
24. The Tribunal decided to reject the request to refuse the Local Authority permission to attend the hearing. The Tribunal noted the decision of the President in August 2012 to refuse the original application. The Tribunal was of the view that the Local Authority had complied with the spirit of the initial Presidential Direction of July 2012 and it agreed with the Presidential view that there was no good reason to preclude the Local Authority from the hearing. In any event the Tribunal considered that the issue was resolved by the agreement of the parties to consider the first draft report along with the addendum note prepared by the Parents as set out above.
25. The Parents indicated that they wished to pursue their application of 3 September 2012 for the parties to give evidence under oath in line with Regulation 46 (8) of the Special Educational Needs Tribunal for Wales Regulations 2012.
26. The Director of Education indicated that the Local Authority had no objection in principle to this request, although they did not consider it to be necessary.

27. The Tribunal decided to refuse the request and explained the reasons for the refusal to the parties in summary form during the hearing.
28. The request flows from the changes made to the Educational Psychology report. Whilst the Tribunal supported drives to make reports as clear and concise as possible, the Tribunal questioned whether it was sensible to make changes to documents that had already been submitted in support of a statutory process. In any event, having to make changes, it considered that the Local Authority should have made the position clear to the Parents. The Tribunal felt that not to do so was likely to result in unnecessary confusion. However, having heard evidence from the Director of Education on the matter, the Tribunal was satisfied that the changes were made in good faith without any intention to deceive.
29. The Tribunal is not a forum where evidence is given routinely on oath and it was felt that there would need to be clear grounds for requiring any party to do so. In light of the Tribunal's assessment that the actions of the Local Authority were taken in good faith the Tribunal did not consider that grounds had been made out to necessitate the Tribunal making the order requested.
30. The Tribunal took the view that the Parents would be entitled to make representations in closing submissions concerning the evidence of witnesses for the Local Authority and the Local Authority representative. The Tribunal would then take these into account when assessing the accuracy of the evidence it heard.
31. Further, the Tribunal considered that matters had been clarified significantly through the agreement of the parties that the Tribunal should consider the first draft of the report along with the addendum note from the Parents.
32. The Parents indicated that whilst they felt it was regrettable that the Tribunal did not have the benefit of direct evidence it was not their intention to pursue an application to secure evidence from the Mentor for the Child.

## **Facts**

33. At the time of the hearings the Child was 13 years old.
34. The Child has been assessed by a number of Educational Psychologists over a number of years. The latest assessments were conducted by Local Authority Educational Psychologist in November 2010 and by another at the request of the Parents in February 2010 and June 2012. The cognitive assessments of both of the Educational Psychologists as set out in their reports of December 2011(first draft) and April 2010 respectively indicate that the Child is of above average cognitive ability.

35. During primary school the Child is reported to have encountered specific learning difficulties in the development of foundation literacy strategies. The test results relating to the Child's reading skills conducted by the Educational Psychologist at the end of 2010 and by another Educational Psychologist in 2012 indicate that the Child now has a very good overall reading ability, although it was noted that the Child tends to read slowly. The test results of 2010 and 2012 indicate that the Child is performing within the average range in relation to spelling. In regard to writing both Educational Psychologists noted that the Child has difficulties with writing and that the Child lacked confidence in their writing ability. In respect of the Child's numeracy skills, they did not test these skills. In the latest report of 2012 it was recorded that the Child achieved a composite mathematics score in the average range. The Child therefore continues to have some specific difficulties in regard to spelling and numeracy skills and greater difficulties in regard to handwriting.
36. The Speech and language therapy report, in response to the statutory assessment, dated November 2011, indicates that the Child has problems with short term auditory memory. This is recorded in the Note in Lieu. The Note also records that the Child has some difficulties with personal organisation.
37. The Note in Lieu records that the Child has features of developmental coordination disorder and hypermobility in joints. The Occupational Therapy reports of Paediatric Occupational Therapist, of the local NHS Health Board, concluded that the Child has clear difficulties in the grading of movement and in coordination. These reports also concluded that low muscle tone is likely to result in the Child seeking movement and appearing therefore to be fidgety. They also confirm the Child's difficulties with handwriting.
38. During the assessment they conducted a sensory processing assessment of the Child. Based on this, it was reported that the Child has difficulties in sensory processing, particularly relating to touch, auditory and oral sensory input. They reported that the Child can be sensory defensive in that the Child can be over responsive to certain sensory stimulus and at times can be under responsive to sensory stimulus. It was reported that the Child's behavioural and emotional responses to these difficulties can be rigidity in maintaining routines, emotional outbursts, sensitivity to criticism, fears and that the Child can have difficulties expressing emotions.
39. The report of both Educational Psychologists, together with information from the Parents, information from School A and information from the Child's Tutor indicate that the Child has a tendency to interpret written and oral information literally. The Child is reported to be rigid in thought processes and to lack flexibility. The Child appears to find it difficult to cope with change or uncertainty. The Child is reported to experience difficulties with social communication. In a report of 2012 it identifies the Child as having behaviours consistent with ASD/Asperger's Syndrome. A

referral for formal assessment in respect of ASD was made some considerable time ago and is still outstanding. It is understood that the assessment will now take place in mid October 2012.

40. Again the report of both Educational Psychologists, together with information from the Parents, information from School A and information from the Child's Tutor indicate that the Child lacks self confidence. They also indicate that the Child is prone to anxiety. The Note in Lieu records that the Child is at present unable to attend school because of difficulties associated with anxiety and that this has resulted in a powerful resistance to attend at secondary level.
41. The Child is presently a registered pupil at School A. The Child's chronological age places them in Year 9. On secondary transfer in September 2010 the Child moved to School A from the Child's first primary School. School A is a Local Authority mainstream Secondary School in which pupils are taught principally through the English language. It is not the Child's catchment school.
42. The information from School A in response to the statutory assessment indicates that following a transition meeting in May 2010 the School decided to put in place the following provision for the Child from September 2010; provision was made for the Child to be withdrawn from lessons to attend the School's Dyslexia Centre for 3 lessons per cycle to work on basic literacy skills and keyboard skills, and for the Child to be withdrawn to attend the Social Use of Language Group organised by the School to work on the Child's tendency to take things literally and thereby reduce the risk of misunderstandings which in turn would minimise the risk of the Child becoming anxious. The Child also had access to general in class LSA support in mainstream classes. Staff were also informed of the Child's needs.
43. The Child was placed at the School Action plus Enhanced Level of the Local Authority's continuum of provision for children with special educational needs by the School. A request from the School for specific funding from the Local Authority for 10 hours LSA support was refused. The Director of Education told the Tribunal that this decision was made because it was felt that the School could allocate provision from within the resources already available to it.
44. The Child's attendance at School A was initially excellent. However from November 2010 the Child started to experience difficulties in attending the School and from December 2010 onwards the Child stopped attending mainstream provision there completely. The Child has not been in full time education since this time.
45. According to the Child's attendance records for academic years 2010 – 2011 and 2011- 2012 School A appears to have recorded the Child's absence from school as being largely authorised for the period November



2010 – December 2011. Thereafter the School appears to have recorded the absences as unauthorised save for the periods when the Child has been engaged with the plans for reintegration. The Local Authority Education Inclusion Team wrote to the Parents in January 2011 and in July 2012 indicating that the Child had been referred to the Team as a result of poor attendance.

46. There have been a number of attempts made to secure the Child's reintegration into school over the course of the last 22 months. To date none of these attempts have resulted in the Child returning to full time education. Both school based and non school based venues have been tried. Details of the various plans are set out in the papers.
47. Both parties have very different views concerning how the Child coped with the plans and how well or otherwise the Child engaged with the reintegration process. Each party blames the other for the ultimate failure of these plans to return the Child to full time education. The position of each is set out in the papers and was reiterated during the course of the hearing.
48. In summary the Parents do not believe that the Child coped well with the plans. They believe that the Local Authority has not fully recognised the nature and extent of the Child's special educational needs and as a consequence the provision that has been made to date and is currently being proposed by the Local Authority is inadequate and has been ill defined. They also consider that to date plans have been inconsistently applied. They feel that they are being unfairly blamed by the Local Authority for the failure of previous reintegration plans.
49. The Local Authority on the other hand considers that when the Child has engaged with the interim provision on offer the Child has appeared to cope well. It believes that it has a good understanding of the Child's needs and that these needs can be met through the Child's placement in mainstream provision at School A with additional support from the School and with some additional support from Local Authority and its Support Services under the SAPEE stage of the Local Authority's continuum of provision for children with special educational needs. The Local Authority has concerns that the Parents are not fully committed to the reintegration of the Child into School A. It has concerns that reintegration plans are being frustrated as a result.
50. The Child was referred to Support Service in April 2012. The referral form indicates that the referral was made with the aim of identifying, "*support mechanisms that will support the Child to manage social and educational situations with confidence*" and "*to support the Child to access School A....*" As a result of this referral the Child has been assigned a Mentor. The Mentor has been meeting with the Child regularly since May 2012 and has been liaising with the Parents. It is understood that the Mentor is working with the Child to support social development and to assist the

Child in acquiring effective strategies to manage anxiety. The Tribunal was provided with a copy of a letter dated September 2012 which outlines the involvement of the Service with the Child to date.

51. In August 2012 the parties met to consider plans relating to the Child. In August the Head Teacher at School A, wrote to the Parents to outline the provision that was planned for the Child. In this letter it was indicated that the Support Service would identify an experienced SEBSA to work with the Child. It was proposed that the work would initially take place at their offices and would later move to a Leisure Centre. It was also proposed that the SEBSA would liaise with the Child's Tutor to secure information regarding strategies that were currently working for the Child. Once the Child was returned to School A it was proposed that the Child would be placed in a mainstream class where support was already deployed and that an additional adult would be deployed with the Child's class during the reintegration period. In addition the Child would have access to small group work for 10% of the curriculum time. It was proposed that the plans would be reviewed every 6 weeks and the next review was set for September 2012.
52. The School Summary of provision reiterates and expands on the school based plan outlined above. It explains that small group provision will be made to deliver literacy support from a specialist teacher and Speech and Language support would be delivered via access to a social use of Language group facilitated by trained staff and overseen by a Speech and Language Therapist. In addition a motor skills programme would be delivered following further advice from the Occupational Therapy Service.
53. The Summary also proposes that the Child would be placed in a registration class where the teacher was experienced in supporting pupils with difficulties. The form teacher would be an initial point of contact and in addition the Child could have access to the Year Manager to discuss concerns or worries. The Child could also be provided with support from the onsite School Counsellor and could have weekly individual contact with a member of staff at the Offices to work on social skills using the Teen Talk programme. The Local Authority would initiate an ICT assessment for the Child and it would provide additional adult resources for 1 term to support reintegration into school.
54. The Support service told the Tribunal that a SEBSA has recently started to work with the Child at the offices, along with an additional Youth Worker. They said that a SEBSA has considerable experience of working with young people with additional needs over approximately 6 years. They said that the Child knew the SEBSA but the Youth Worker had not been known to the Child. The Support Service said that following the next review meeting it was anticipated that the work with the SEBSA would be extended and that it could if appropriate extend into the School setting.

55. The Tribunal was provided with copies of 2 written reports which outline the contact the SEBSA has had with the Child over the almost 2 week period. The Parents took issue with some of the content of the reports in that they do not feel it presents an accurate picture of how things have gone for the Child over this period.
56. Since May 2012 the Parents have been privately funding the Child's Tutor to provide individual tuition for the Child. The Parents told the Tribunal that the tuition is going well and that it had rapidly increased from 1 hour per week to 5 hours per week. They felt that the Child would attend more sessions if they could afford to pay for them. The sessions take place at the Tutor's home. The Child is usually taken to and from the sessions by the Parent. On the occasions that this has not been possible the Child has been taken by a family friend and is accompanied by a sibling.
57. The 5 hours of individual tuition is currently broken down into 2 x 1.5 hour and 2 x 1 hour sessions. The Tutor has provided written reports relating to the sessions with the Child, dated May 2012, June 2012, and September 2012 and also gave evidence concerning work with the Child at the hearing. At the present time they were focusing on work in Maths, English, German and History and they also do a small amount of Geography.
58. The reports indicate that in Maths the Child is working through KS 3 topics and is now pursuing some topics in which the Child is particularly interested into at GCSE level. In English the Child is working on aspects of grammar that the Child finds difficult, comprehension, handwriting and spelling as necessary. In History the Child has been working on the period of British History 1066 -1500. In German the Child has learnt to use greetings and has been studying topics related to speaking about yourself and your family and home. The Child has also started to learn some grammar. It is reported that the Child uses handwriting and word processing to record work. The Child is reported to be a very competent user of the keyboard and has a good working knowledge of Word documents.
59. The Child is reported to particularly like History. The Child is reported to be doing well in Maths but if the Child finds something confusing the Child becomes "stuck" and cannot move on until the confusion is resolved to their satisfaction. The Child appears unable to abandon the method the Child has used for a more effective one and will continue to puzzle over how to make the original methodology work. When the Child becomes "stuck" it is reported that the Child's anxiety levels increase significantly. The Child appears to prefer not to write out workings out in Maths. In English the Child has strength in reading and understanding factual texts but appears to struggle with inference and deriving meaning from less factual text. It is reported that completing work at home appears to be an issue for the Child and so whilst sometimes it is suggested that the Child completes work at home the Tutor does not make an issue when this is not done.

60. The Tutor notes that the Child is hard working and tries their best and believes the Child is making good progress with their studies. The Tutor told the Tribunal that they feel that the Child is keen to learn and is able to concentrate well at times provided there are no distractions. The Tutor indicated in the latest report that the Child has slowly increased the level of communication with the Tutor and at times can be quite chatty. However, when the Tutor has asked more personal questions they noted that the Child has tended to become more closed, although it was possible to repair communication by switching to other topics of conversation.
61. In the evidence to the Tribunal the Tutor commented that the Child needs to feel that the Child has got things right and appears concerned and very anxious about this. In written work for example the Child will repeatedly correct work until the Child feels it is correct. The Tutor said that the Child has a tendency to take things very literally and even when the Tutor believes they have been very clear in communication the Child has taken what they said more literally than intended. The Child has needed time in such circumstances to reflect on the situation. The Tutor also said that they needed to keep noise levels and distractions to a minimum as the Child is very easily distracted and becomes anxious if the environment is not calm and quiet.
62. The Tutor told the Tribunal that they felt the sessions with the Child were working well overall because they were 1:1 and they were able to take into account the Child's particular needs and learning style and support the Child's need to get things right. The Tutor also felt that working in their home rather than at the Child's home appeared to help the Child because the Child appears to have a need to keep aspects of the Child's life clearly delineated and boxed off and because it was a neutral venue.
63. The Tutor told the Tribunal that they have not had previous experience of teaching children who have been diagnosed as having ASD but has over the course of their career worked with children with a range of needs. The Tutor said they had a B Ed and Masters and had taught in mainstream primary schools for 6 years before becoming a home tutor 10 years ago.
64. The Parents argue that the Child requires a Statement because the Child has complex and severe special educational needs that necessitate a high level of support and provision from the Local Authority. They consider that the evidence from the statutory assessment supports this view, as does the findings in the 2 reports and the evidence of the Tutor. They point also to the fact that the Child has not been able to engage with school or the alternative provision offered by the Local Authority over the past 22 months as evidence of the Child's significant difficulties. They are concerned that the Child has missed so much education that they will now find it more difficult in school than the Child did when they started at secondary school in September 2010.

65. They argue that the Local Authority has not to date properly recognised or defined the nature of the Child's special educational needs and that it has not identified adequate provision to address them. They consider that the Child requires a Statement so that the Child's needs can be fully and properly identified and so that adequate provision can be secured to address those needs.
66. They do not consider that provision at the SAPEE stage of the LA's policy relating to provision for special educational needs offers an adequate guarantee that necessary provision will be made for the Child. They consider that a Statement is necessary to secure a guarantee that adequate provision will be made. They said that the LA's SEN Strategy may be good in theory but they felt that in the Child's case it was not delivering in practice.
67. They said that at the present time they are undecided about the type of educational placement that would be appropriate to meet the Child's needs.
68. In their reasons for the appeal they explain that they do not believe that the Note in Lieu clearly and properly describes the reintegration programme that will be required to return the Child to full time education. A number of different strategies both at school and in other settings have been tried and they have not worked. In their view there had been no substantial progress in terms of moving matters forward. They argued that it is now time to be very clear about what is required and for this to be recorded in the form of a Statement.
69. The Educational Psychologist supports the Parents view that the Child requires a Statement of Special Educational Needs. They consider that the Child has complex special educational needs and that the Child now requires a specialist school placement.
70. Based upon assessments of the Child and discussions with the Child concerning their time at School A, they believe that the Child was overwhelmed by their experience at the School and this exacerbated the levels of stress and anxiety to the point where the Child could no longer cope with attending the School. They feel that to date the Child's experiences there have not been resolved. The Educational Psychologist is concerned that attempts to reintegrate the Child into the School have failed and therefore the Child has been unable to attend secondary school for a significant period of time. In their view reintegration to School A has a very poor prospect of success and even if it were to succeed initially they would be concerned about the prospects of a further breakdown. The Educational Psychologist believes that the Child now requires a placement in a more specialist educational environment, where learning needs and social and emotional needs can be addressed holistically and where the Child can engage with a peer group of similar ability and sensitivity.

71. In the second report it states that they continue to be supportive of the Child being taught principally in the English language and continues to recommend that the Child should have access to alternative methods of recording work. In addition they believe that the Child requires counseling /mentoring to help them gain a better understanding of them self and to help the Child develop strategies to manage difficulties. In their view this work should be carried out by a specially trained teacher, Speech and Language Therapist or a Psychologist. The work would be delivered on an individual basis and through paired and group working. All teachers need to be aware of the Child's needs and anxiety and social withdrawal. The Child will need to be given additional reading time and additional time to complete work. The Child continues to need specialist approaches to address underlying spelling and writing difficulties. Close liaison with the Parents is also recommended.
72. The Local Authority decision letter of February 2012 states that the Local Authority considers that it is not necessary to issue a Statement of Special Educational Needs in respect of the Child because, "*there is not enough evidence that your child's special needs are complex or severe enough to require a Statement.*" The letter goes on to indicate that "*The Child does have special educational needs but these needs can be met without a Statement in a mainstream school*". It then goes on to state that a Note in Lieu would be issued within 2 weeks.
73. The Local Authority issued a Note in Lieu in respect of the Child dated 1 March 2012. In this document the Local Authority state that, "*having regard to the Code of Practice on the Identification and Assessment of Special Educational Needs and to its current criteria for drawing up a Statement the Education the Authority concludes that the Child's special educational needs can be adequately met through resources available to mainstream schools in the area (supplemented by additional provision arranged by the Education Authority). It has therefore concluded that a Statement of Special Educational Needs is not necessary.*"
74. At the time that the Note in Lieu was drawn up the Local Authority proposed that it would arrange a short term reintegration programme for the Child through interim individual teaching for the Child in which the Child would receive education in the core subjects and via which there would be a staged return to mainstream school to support access to an enhanced curriculum. Once the Child was reintegrated into mainstream school the Local Authority proposed to supplement the School's resources by providing the Child with additional support delivered at the County's School Action Plus Enhanced Extended Level. The Note in Lieu does not specify what level of additional support would be needed for the Child and it does not specify what level of support the Local Authority would provide.
75. The Local Authority stands by the decision of February 2012 and the reasons that it has given for this decision. It also stands by the content of the Note in Lieu in terms of its identification of the Child's special

educational needs and its overall aim of returning the Child to full time mainstream provision at School A with support from the School and with some additional support from the Local Authority at the SAPEE stage of the Local Authority's provision for pupils with special educational needs. It accepts that the plan for reintegration is now different to that recorded in the Note in Lieu and that it may take some time to achieve reintegration but flexibility would still be needed within the plan and it would need to be regularly reviewed as outlined in the Local Authority Case Statement.

76. The Director of Education argued that it has not been made clear what additional needs the Child has over and above those that are already identified in the Note in Lieu. The Director also argued that there was no evidence to support a case for the Child having severe or complex special educational needs such that the Child would require a specialist school placement and therefore in the view the Child did not require a Statement because the Child's needs could be met within the Local Authority's extended and enhanced provision.
77. In their view, the Child had shown that they have the ability to engage with people in a number of different settings and with their Tutor and in the context of Scouts, where the Child was able to attend the International Jamboree during the summer of 2012 accompanied by a sibling and a friend. The Director said that this reflected the experience of staff who had reported that the Child engaged well when the Child attended sessions there. On this basis the Director argued that the Child had the ability to engage with the current reintegration plan and could be successfully returned to full time mainstream education at School A with support and did not need a Statement of Special Educational Needs to do this.
78. The Director told the Tribunal that School A is a very good school and it is very effective in meeting the needs of children with a range of special educational needs. The Director pointed to the School's Special Educational Needs Policy and the Inclusion Policy as evidence of this. They said that whilst School A was not a special school there is lots of specialism and considerable expertise within the School. They felt confident that the School could meet the Child's needs. The Director pointed to the Summary of Provision that the School now proposed to make in respect of the Child's integration as evidence of this.
79. The Director argued that the Local Authority has a very successful inclusion policy in respect of children with special educational needs, in which the Local Authority works collaboratively with local schools to meet the needs of children with significant special educational needs. The Director said that the Local Authority ensures that local schools are well resourced and trained to deliver support and they also have good access to outside support agencies. As a result the Director was confident that the Child's needs could be met in School A. The Director told the Tribunal that if it thought that the Child required a Statement of Special Educational

Needs then this meant that the Local Authority SEN Strategy was not working.

80. The Child's views are recorded at the end of the parental Case Statement. The Child's views were also recorded by the Advocacy Service for Children in May 2012 and these are set out in the bundle. The Parents confirmed at the hearing that the Child was happy for these views to be shared with the Tribunal and the Local Authority. The Educational Psychologist recorded their observations on the Child following the 2 assessments of the Child and recounts what the Child said concerning the views about school and the situation in the reports of April 2010 and June 2012. The first draft of the Educational Psychology Report also records details relating to the Child's views and likes and interests.
81. The Child attended the morning session of the Tribunal. During this session the Child met with the Tribunal Panel directly in the presence of the Parents and Behaviour support service for approximately 45 minutes. The Child behaved appropriately throughout the session.
82. During the direct discussion with the Tribunal Panel the Child appeared to be initially unsure and quite hesitant. However, over time the Child appeared to grow in confidence and was at times able to make good eye contact with Panel Members. The Child seemed to prefer to answer direct questions rather than to express their own views. The Child appeared to close up at some points in the discussion when asked more direct closed questions but was able to re engage in the conversation afterwards in response to more open ended questions. The Child could not tell the Tribunal what they thought worked well for them. The answers the Child did give to questions were sensible and coherent. The Child demonstrated a good sense of humour in their answers. The Child had access to their buff during the discussion but did not appear to use it. The Child turned to their Parents for reassurance infrequently and for the large part the Child appeared able to speak for them self or to indicate the Child was not able to give an answer.
83. The Child was able to tell the Tribunal that they liked origami and that the Child had been icing a dinosaur cake that morning. The Child said that they liked reading and that the Child was currently reading the Dick Francis novels. The Child also told the Tribunal that they had read the Lord of the Rings. The Child was able to give the Tribunal an animated account of the trip to Denmark for the International Scout Jamboree that had taken place in the summer. The Child told the Tribunal that they went to the Jamboree with a sibling and friend. Later during the morning session the Child presented a Tribunal Member with an origami bird that they had made and asked their Parents to show the Tribunal the iced dinosaur cake, which they did.
84. The Child was given the option of writing down anything else they wished to say to the Tribunal during the breaks that occurred in the morning



session and at lunch time. It was explained that they need not do this if they did not want to and that the Tribunal would not mind if this was the case. The Child chose not to do this.

### **Tribunal's conclusions with reasons**

85. In reaching the decision the Tribunal carefully considered the written evidence submitted by the parties and the evidence given at the hearing. The Tribunal also considered relevant sections of the Education Act 1996 and supporting Regulations and relevant provisions of the Special Educational Needs Code of Practice for Wales.
86. The Tribunal wished to thank the Child for attending the morning session of the hearing in September 2012 and for being prepared to talk to the Tribunal Panel. Panel Members found the talk to be interesting and useful. The Tribunal has taken what the Child said into account in reaching the decision.
87. Under s.324 of the Education Act 1996 the Tribunal needed to decide whether, in the light of the statutory assessment carried out in respect of the Child, it was necessary for the Local Authority to determine the special educational provision which any learning difficulty the Child may have calls for. Under s.325 of the Education Act 1996 the Tribunal could order the Local Authority to make and maintain a Statement of Special Educational Needs in respect of the Child, or it could order that the case be remitted back to the Local Authority for it to reconsider whether or not it was necessary for it to determine the special educational provision which the Child required taking into account any observations made by the Tribunal or it could dismiss the appeal.
88. After very careful consideration the Tribunal decided that the evidence it had been presented with indicated that the Child's current combination of special educational needs was such as to require a level of provision that the Child's School could not reasonably be expected to make from within its own resources with access to advice and support from the Local Authority Support Services. The Tribunal felt that the length of time that the Child had been out of school added a significant dimension to the complexity of the Child's situation. The Tribunal concluded that it is necessary for the Local Authority to take the lead in determining provision in this case at the present time and therefore that it was necessary for it to make and for the time being maintain a Statement of Special Educational Needs for the Child.
89. The Tribunal did not accept the Local Authority case that the Child's special educational needs were not sufficiently complex or severe at the present time so as warrant the need for a Statement of Special Educational needs to be issued.

90. The Tribunal considered that the evidence from both parties demonstrated that the Child presently has significant and complex emotional and social difficulties that are impeding the Child's learning and adversely impacting on the Child's ability to access appropriate education. In the view of the Tribunal these difficulties, combined with the Child's other difficulties, present a complex and severe combination of special educational needs.

91. The Tribunal considered that this view was supported by the evidence of the witnesses for the Parents, the Child's Tutor and Educational Psychologist, and also that it was reflected in the evidence of Local Authority Educational Psychologist set out in the report of December 2011(1<sup>st</sup> Draft). For example, in the body of the report it states;

*"We have seen that, on the basis of general ability, the Child should be expected to cope with a broad curriculum alongside peers. Nevertheless, the assessment as a whole indicates that the Child's ability to learn is affected by weaknesses and anxieties in a school context. There is a complex interaction of factors such as memory, personal organization skills, handwriting fluency and sensory discomfort. The Child is sensitive to environment. The Child's classroom functioning is also affected by preference for literal interpretation and immaturities in communication skills and social understanding. The Child has developed a fear of misunderstanding and of being wrong and is at risk of further escalation of irrational fears unless the Child can accept evidence to the contrary. The Child is developing defense mechanisms and avoidance strategies for a range of experiences in the classroom and beyond which the Child perceives will cause them discomfort. The Child's approach to learning is also undermined further by emotional responses when situations are beyond the Child's control. The Child's confusion is also associated with the Parent's concerns about wellbeing in the school environment, with regard to how the Child should respond".*

The Parents reported that when the Child is worried the Child becomes very quiet and stubborn, but will lose control and cry if pushed."

Also in the conclusion it states;

*"The Child has to contend with a number of difficulties which the Child perceives could be avoided by not attending school. The assessment has identified a number of learning issues which individually are not insurmountable for the Child but in combination may continue to present the Child with a challenge."*

92. The Tribunal was impressed with the evidence given by the Tutor. The details are outlined in the Facts above. The Tribunal found the evidence to be considered and balanced. The Tribunal thought that the evidence was particularly helpful in establishing a clear picture of how the Child is performing currently and in securing an understanding of learning style. It appeared to the Tribunal that this evidence was consistent with the

hypotheses drawn in the reports of the NHS Occupational Therapist, relating to the likely impact of the Child's sensory difficulties.

93. The Tribunal did not consider that the fact that the Child does not presently have a formal diagnosis of ASD/Asperger's Syndrome or that the Child does not have a formal diagnosis from the local CAMHS Service of a specific mental health problem negated the conclusion that the Child presently has severe and complex emotional and social difficulties. In the view of the Tribunal, there was clear evidence to demonstrate that the Child has significant ASD like traits and is prone to high levels of anxiety and that these difficulties are having an impact upon the Child's day to day functioning and upon learning at the present time. The Tribunal considered that evidence of the Child's actual functioning was more relevant and compelling than the presence or absence of any formal diagnosis.
94. Additionally, the fact that the Child appears to be able to function more effectively in certain settings than in others and that at times appears able to engage well with tutors or support workers did not, in the view of the Tribunal, negate the existence of the difficulties and did not automatically mean that the Child's difficulties were not severe or complex.
95. The Tribunal considered that this argument was over simplistic and did not take into account the circumstances surrounding the Child's responses. The evidence of both sides highlights that the Child can find it difficult sometimes to express concerns the Child may have about a situation and so these concerns can sometimes go unrecognised. In addition, the Child struggles with rigidity of thought processes and appears to have a particular fear about school and high levels of anxiety around this matter. It follows that the Child is likely to cope more effectively with difficulties in non school related settings and with people whom the Child does not link to school, when compared to situations which the Child considers to be school related. The Tribunal also took the view that inconsistencies are not uncommon in children with special educational needs, particularly children who demonstrate ASD like traits or suffer with significant anxiety issues.
96. Having carefully considered the Note in Lieu the Tribunal took the view that whilst it went some way to describing the Child's special educational needs it did not provide the complete picture of them. The Tribunal considered that the Personal Social and Emotional and the Motor Sensory and Medical content of the Special Educational Needs Section did not give sufficient detail or emphasis concerning the Child's ASD like traits, sensory difficulties and the Child's current high levels of anxiety, so as to enable a reader to comprehend properly the significant impact that these difficulties are having on the Child at present. The Tribunal also considered that the Educational and Communication content of the Needs Section needed to reflect the fact that the Child has above average cognitive abilities and make it more clear that the Child has residual specific learning difficulties and they needed to

emphasis the impact that their tendency to literal interpretation and rigidity of thought processes appears to be having upon learning.

97. The Child has effectively been out of full time schooling for 22 months. This was a major concern for the Tribunal. The Tribunal took the view that this situation must not be allowed to continue. The Tribunal did not consider that it would be helpful to explore the recriminations that the parties have levelled against each other in regard to the failure of previous attempts at reintegration. The Tribunal considered that what was vital now was to ensure that present reintegration plans were suitable and sufficiently robust to deliver success in moving the Child back towards full time education.
98. In regard to current plans for reintegration the Tribunal found the evidence of the Local Authority to be lacking in substance. Whilst accepting that any reintegration plan needs to have a degree of flexibility and ought to be broken down into smaller stages, the Local Authority did not appear to have considered how it would go about bridging the gap between current arrangements and securing the Child's reintroduction to school. Moreover the reintegration plan appeared to the Tribunal to be driven primarily by the Local Authority rather than by the School.
99. In regard to provision in school again the Tribunal found the evidence of the Local Authority to be lacking in substance and to be insufficient in detail. In this regard the Tribunal felt that it was regrettable that the Local Authority had not brought a representative from School A to the Tribunal hearing to provide first hand evidence concerning the School's proposals.
100. The letter from the Head Teacher of August 2012 to the Parents and the School Summary of Support appeared to the Tribunal to focus on provision after the Child is returned to school full time and they did not demonstrate a clear plan from the School to support the initial reintroduction of the Child into the School.
101. The proposals that have been put forward seemed to the Tribunal, in many respects, to be non specific and reflected what had been made available to the Child on transition in September 2010. The Tribunal considered that the Child's difficulties had become more entrenched since the initial transition to School A over 2 years ago. As a result the Tribunal was of the view that the Child needed a more creative, flexible and nurturing approach than the approach adopted in the written information provided by the School. In addition the Tribunal felt that the approach now needed to be specifically tailored to the Child's current presentation and learning style and again the approach adopted in the written information provided by the School did not, in the opinion of the Tribunal, provide this. The proposals were also lacking in sufficient specifics relating to the provision that would be on offer.
102. By way of example, from the information provided it remained unclear as to exactly how much additional adult support the Child would receive in school

and in addition the Local Authority funding of this provision appeared to be time limited. In the view of the Tribunal, given the Child's current presentation and learning style and problems with social interpretation, this was the sort of exceptional case where high levels of guaranteed additional adult support would be necessary and where it would be counterproductive at the outset to set a specific time limit for the withdrawal of this provision (although it may be possible to consider a gradual reduction in support over time when the Child had settled well into full time schooling again).

103. The Tribunal took into account the fact that under the Local Authority's SEN Strategy the School could request additional funding from the Local Authority to secure additional adult support in the future. However, the Tribunal was mindful of the fact that there would be no guarantee that further additional funding would be provided, as evidenced by the refusal of the Local Authority to fund the School request for 10 hours of additional adult support for the Child in November 2010.
104. By way of further example, whilst the School has given an indication that 10% of the Child's curriculum time would be allocated to support group work, the written information provided did not explain how this overall figure was arrived at and it was unclear as to how much of this time would be allocated to the Child for particular aspects of the proposed group work.
105. Furthermore the written information provided did not appear to address the situation of the Child at lunch and break times and other unstructured times or how the Child would be supported to access friendship groups. There appeared to be no consideration given as to how environmental factors within the classroom would be addressed to meet the Child's needs. Also the information did not address how the School would propose to manage homework. In addition, in identifying an experienced form tutor and the year manager as possible points of contact for the Child, no real account appears to have been taken of the Child's reluctance to share difficulties.
106. The Director claimed that School A is a very good school and that it is capable of meeting the Child's needs within its own resources with Local Authority support. However, the Tribunal was provided with limited information about the School, even taking into account the Policy documents admitted into late evidence. Further, no one from the School was present to give evidence to the Tribunal about the School and about the Child and how it proposed to meet the Child's needs. As a result the Tribunal considered that the assertions made by the Director were not clearly backed by evidence.
107. On the information presented to it the Tribunal felt that the Local Authority had not demonstrated that School A could meet the Child's needs without considerable and sustained additional input from the Local Authority which was over and above that which would normally be available even at the Enhanced and Extended stage of the continuum of Local Authority provision.

108. The Director claimed that if the Tribunal concluded that the Child needed a Statement this would reflect badly upon the Local Authority SEN Strategy and would be an indication that the SEN Strategy was not working. The Tribunal disagreed with this view. In reaching this decision the Tribunal wished to make it clear that it based the decision on the very particular individual circumstances of this case and it makes no criticism of the policy in itself. The Tribunal considered that the SEN Strategy demonstrated the clear commitment of the Local Authority to meeting the special educational needs of children within its area for whom it has responsibility.
109. For all of the reasons outlined above the Tribunal decided that it should uphold the appeal.
110. The Tribunal considered whether it should order that the case be remitted back to the Local Authority for it to reconsider the decision as to whether or not the Child should be issued with a Statement of Special Educational Needs. The Tribunal decided that this was not appropriate in this case. The Tribunal took the view that the further delay and uncertainty that would be caused if this step was taken would not be in the Child's interests. It was likely to serve to exacerbate the current mistrust and tension between the parties and it risked diverting attention from the vital task of developing an appropriate strategy for returning the Child to school.
111. The Tribunal decided that at the present time the Child does require a Statement of Special Educational Needs to support the Child's return to school and it decided to make an order to this effect.
112. As the Tribunal decided that the Child's needs were presently such as to require a Statement of Special Educational Needs to support reintegration into the proposed mainstream placement it did not need to consider the opinion of the Educational Psychologist that the Child requires a specialist placement in a school for children with ASD. The Parents told the Tribunal that they had not reached a view as yet as to the appropriate placement for the Child. This will be a matter for the parties to determine when the Child's Statement is drawn up.
113. The Tribunal is aware that relationships between the parties have become extremely strained and that unfortunately a breakdown in trust has taken place to the point where both sides mistrust the actions and motives of the other and their positions have become entrenched. This is to be regretted since effective partnership working between Parents, Schools and Local Authorities is a very important element in supporting the delivery of effective education to children. Also, in the experience of the Tribunal, there is an added concern in that children can pick up on these tensions.
114. The Tribunal felt that on the evidence it had heard from both parties that each party is seeking to act in the best interests of the Child. The Tribunal hopes now that this appeal has concluded that the parties can begin to put

aside their mistrust, can recognise their shared interest in securing the return of the Child to full time education and thereby find a way to begin to work together in the Child's interests.

**Order:**

The appeal is allowed.

The Local Authority is to make and maintain a Statement of Special Educational Needs in respect of the Child.

**Dated October 2012.**