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## **DECISION**

<b>Date of Birth:</b>	2006	
<b>Appeal of:</b>	The Parent	
<b>Type of Appeal:</b>	Contents of a Statement of SEN	
<b>Against Decision of:</b>	Local Authority	
<b>Date of hearing:</b>	2013	
<b>Persons Present:</b>	The Parent	<i>Parent</i>
	Parent Representative	<i>Solicitor</i>
	LA Representative	<i>Solicitor</i>
	LA Witness	<i>Head Teacher</i>
	LA Witness	<i>SALT</i>

### **Decision**

1. The Parent appeals under Section 326 of the Education Act 1996 against the contents of a Statement of Educational Needs written by the Local Authority in respect of their Child.
2. The Child was born in March 2006 and is presently 7 years old. The Child lives at home with their Parents and older sibling. The Child attends School A, which is a mainstream school.
3. The Child has difficulties relating to their speech and language. The Child finds this frustrating, and it adversely affects the Child's confidence. The Child has 10 hours of support each week at school and has a Speech and Language Programme
4. The Parent became concerned about the Child's difficulties and requested a Statutory Assessment of the Child's special educational needs in late 2011/early 2012. There was an unfortunate delay in this process being completed, but it did eventually result in a proposed Statement being issued in September 2012. The assessment confirmed that the Child had difficulties with Speech and Language. Consequently the Child was considered for placement in a specialist unit that met the needs of children with language difficulties. In the local authority area, this provision is provided at School B which has a specialised unit. The Child was considered for placement at School B, but in a letter dated November 2012 the local authority stated that the Child did not meet the entry criteria for placement. The local authority therefore suggested that he Child should remain in a mainstream placement, and the Parent has appealed, principally against such a placement, but also in relation to some of the

content of Parts 2 and 3 of the Child's Statement. We have therefore been asked to consider elements of Part 2 and 3 of the Child's Statement, together with Part 4 in relation to the school or type of provision that should be provided for the Child.

5. The parties have produced a version of the Child's Statement they have both worked upon, and also discussed this further on the morning of the hearing. This narrowed the issues we have had to consider and we are grateful for their assistance in this regard.
6. In arriving at our decision we have taken into account section 325 of the Education Act 1996, the Special Educational Needs Code of Practice for Wales, and all the evidence that we have read and heard.
7. On the morning of the hearing in May 2013, the Local Authority changed its position in relation to the type of placement required to meet the Child's needs. It recommended that a Learning Resource Base placement be provided for the Child, rather than a mainstream placement. The Child's present school, had such a resource, but it catered only for children in Key stage 1. The other placements available in the area are at School C and School D. The Parent, through their representative wished to continue with the case despite this late change. The Local Authority sought an adjournment to enable them to adduce further evidence about the availability, and suitability, of a Learning Resource Base placement. It was conceded by the Local Authority, however, that there was little time for transitional planning and therefore there was some urgency in this matter being decided. We were concerned that there should not be further delay in a case where there had already been delay. It was also our view that the Local Authority should have been in a position to put its case on the day. It was no fault of the Parents that they were unable to fully do so. The Local Authority had had proper notice of the Parent's case, and it was for them to show that the placement at the unit at School B was unsuitable. The application to adjourn was therefore refused.
8. The Law - The relevant provision of the Education Act 1996 in relation to school placement is Schedule 27 paragraph 8. This provides:

*“(1) Subparagraph (2) applies where:*

- (a) the Parent of a child for whom a statement is maintained which specifies the name of a school or institution asks the local authority to substitute for that name the name of a maintained school or maintained nursery school specified by the parent, and*
- (b) The request is not made less than 12 months after—*
  - (i) An earlier request under this paragraph,*
  - (ii) The service of a copy of the statement or amended statement under paragraph 6,*
  - (iv) If the parent has appealed to the Tribunal under section 326 or this paragraph, the date when the appeal is concluded, whichever is the later.*

(2) *The local authority shall comply with the request unless:*

*(a) The school is unsuitable to the child's age, ability or aptitude or to the Child's special educational needs, or*

*(b) The attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom the Child would be educated or the efficient use of resources."*

9. In *SM v Hackney Learning Trust* [2013] UKUT 078 (AAC), [2013] ELR 321 it was confirmed that the duty upon the Local Authority to name the school preferred by the Parents in a Statement is an absolute one, unless one of the exceptions applies. The onus is on the Local authority to prove, on a balance of probabilities that one of the exceptions applies: otherwise it is obliged to name the Parents preferred school in Part 4.

10. Before considering what placement is appropriate we need to consider in turn the contentious issues in relation to Parts 2 and 3 of the Statement.

11. Speech and Language:

In A report dated May 2012 a Speech and Language Therapist, reports that the Child presents with limited auditory memory, low to mildly low average understanding of spoken language, moderately delayed use of language, and moderate speech disorder. The SALT also states that the Child's difficulties using spoken language:

*"...impact on the Child's ability to demonstrate the knowledge that the Child has learned. It also impacts on the Child's ability to form and maintain friendships."*

In relation to the Child's education they therefore concludes:

*"The Child's language, auditory memory and speech sounds difficulties are impacting on the Child's ability to access learning opportunities in school."*

12. On behalf of the Parents the Speech and Language Therapist, provided a report dated April 2012. At page 16 in the report they state:

*"The Child's speech production does not fit the profile of a child with hearing difficulties. The Child was discharged from all audiology with reported typical hearing thresholds. The Child articulation and phonology should be seen as separate from the Child's hearing."*

The SALT concludes in relation to this issue as follows:

*"Given that the Child was discharged with hearing appropriate for speech sounds, it is unlikely that the Child's hearing difficulties continue to impact on their speech production."*

The SALT summarises the position on page 17 as follows:

*“The Child presents with an unusual communication profile for a child of their age....the Child’s ability to express them self using single words and sentences is severely compromised. The Child has significant word finding difficulties and severe difficulties using grammar expressively. Combined with this, the Child has difficulty remembering, storing and manipulating language that the Child hears. This transfers to severe difficulties within the mainstream educational setting as well as the Child’s ability to make and maintain friendships through typical socialisations and conversations.”*

The SALT concludes:

*“The Child has such a significant gap between comprehension and expression that the Child qualifies for a diagnosis of Specific Language Impairment combined with a moderate to severe speech disorder.”*

13. Whilst there is some agreement between the Speech and Language Therapists, it is clear that the SALT regards the Child’s language difficulties to be more severe than does the other SALT.
14. We note the content of the report of an Educational Psychologist, dated the July 2012. The report reveals that at that time, the Child’s teacher was concerned about their difficulties in being able to communicate in class and with peers. At page 59 the Educational Psychologist states that they are without expert information in relation to the Child’s Speech and Language difficulties, but their own observations confirmed that the Child had difficulties in making them self understood and in understanding some vocabulary.
15. An Educational Psychologist has also provided a report upon the Child, the final date of which is April 2013. In their report they set out test results that they obtained under the Individual Achievement Test version 2, which revealed that the Child’s single word reading ability was on the 0.3rd percentile, and the Child’s other reading results were all low. We also note that the Child is only working towards level IC of literacy and numeracy in the National Curriculum. This would suggest that the Child is struggling to develop early learning skills and has, as the Educational Psychologist concludes, “significant limitations regarding the Child’s literacy and numeracy skills.”
16. The Educational Psychologist also spoke to staff at School A. The school ALNCo stated that without full-time one-to-one support and access to small group work, the Child is unable to access the National Curriculum. The Child’s class teacher told the Educational Psychologist that, “The Child’s main difficulty is speech and the Child struggles to put a sentence together. This causes the Child to get frustrated and the Child’s peers become very impatient.” The Educational Psychologist also confirmed that without support of the teaching assistant and small-group work, “..the

Child would not be able to cope in school.” We also note that on page 56 in the bundle the Child’s teacher was concerned that when other children were making demands on their time “The Child can be lost and will just sit there.”

17. The Educational Psychologist concludes at paragraph 15.3 as follows:

*“The findings of this assessment have revealed that the Child should be achieving better in school but due to language difficulties in particular the Child is failing to make adequate progress.”*

She also states at paragraph 16.1:

*“The Child experiences a severe expressive language disorder that combines with a moderate-severe disorder of articulation and phonology.”*

18. We were also told that the Child finds unstructured times at school challenging, and that is aware of, and frustrated by, their difficulties in communicating with peers. Although the Child has shown some improvements in social functioning, both at school, as is reported at page 57 in the bundle, and through successes at the St John's Ambulance Group, the Child is also reported not to initiate play with others independently, and as being quiet and shy and unconfident amongst their peer group. The Child has also been noticed to quickly attach to adults if they are in the vicinity.
19. In conclusion in relation to Speech and Language difficulties, the evidence in our view more accurately reflects the Child’s functioning as evidenced in a social and school context. We also accept the conclusion that the Child’s difficulties are not caused by early hearing problems, but that there is an underlying cause. We also find that these difficulties are preventing the Child from fully accessing the curriculum.
20. Taking into account all of this evidence, we have therefore concluded that the Child has a severe expressive language disorder and a moderate–severe articulation and phonology disorder. This wording should be included in the Child’s Statement and provision provided as we have set out.

### **Occupational therapy**

We note that in the school advice received as part of the Statementing process, part of which is contained at page 43 in the bundle, it is stated as follows:

*“The Child has a poor pencil grip and control. (The Child’s letter formation is poor and therefore the Child’s general handwriting can be difficult to read.) The Child finds using scissors difficult.”*

21. This was referred to in correspondence from the Parent Representative in

a letter dated September 2012, which appears at page 76 in the bundle. They suggested that an Occupational Therapy report should be obtained. The Local Authority chose not to obtain such report, as is clear from the reply dated September 2012, at page 77 bundle.

22. A report was therefore obtained by the Parent and forms part of a joint Speech and Language and Occupational Therapy report. As the Local Authority have not adduced any evidence there is no evidence to gainsay the conclusions or recommendations. The Local Authority was effectively in the position of being unable to challenge this evidence. The recommendations from this part of the report have been set out in the working document and we conclude they should be included as set out therein.

### **Statement**

We have accordingly amended the Statement as per the document that is annexed hereto to reflect the conclusions we have arrived at above.

23. Decision

In November 2012, the Local Authority wrote to the Parent indicating the outcome of the Language Unit Forum, which met in November 2012. The decision of the forum was that the Child "would not meet the criteria for placement at the Language Unit." Paragraph 3 of that letter sets out the reasoning as follows:

*"It was noted that the Child's speech sound difficulties have been impacted on by a previous hearing loss. The Child's scores are not substantially low and would clearly indicate a moderate rather than severe language difficulty. Further to this, the Child's language difficulties would not appear to be their primary need."*

In relation to these conclusions we note that they are partly based upon the Child's previous hearing difficulties, whereas we accept the evidence that these are not related to the Child's current speech and language problems. Upon consideration of all of the evidence we have heard and read, we consider the Child's primary need is related to Speech and Language problems. The forum did not have all of the information that we have been able to consider, namely the further reports. It may well be the case that if the forum had had all this information it would have come to a different conclusion, but it is unnecessary for us to decide that in arriving at our decision.

24. Placement – Part 4

School B has a Specific Language Impairment Base, and given our findings as to the severity of the Child's difficulties, and that the Child's primary need relates to the Child's language problems, we cannot find on

the evidence that a placement at this unit is unsuitable to meet the Child's needs: in fact quite the contrary.

25. For the avoidance of doubt, we should state we have had little evidence as to the provision that would be provided at School C or D, and we could not in any event therefore evaluate whether they were suitable to meet the Child's needs.
26. Further we have heard no adequate evidence to show that the Child's attendance at the unit would be incompatible with the provision of efficient education for the children with whom the Child would be educated or the efficient use of resources. With regard to the latter, we were provided with some comparison figures at page 129 of the bundle, but these did not include the cost of all of the provision that the local authority now accept the Child's needs, transport costs to School C or D, age weighted pupil costs, or the cost of a placement at a Learning Resource Base, which the Local Authority now recommends. Upon this evidence, or rather lack of evidence, we could not conclude that there would be an inefficient use of resources if the Child were to attend School B Specific Language Impairment Base.

## **Conclusion**

Accordingly, we are of the view that Parental choice must take precedence in this case, as is required by Schedule 27, paragraph 8, of the Act. We therefore name School B Specific Language Impairment Base in part 4 of the Child's Statement.

## **Order**

The Statement of Special Educational Needs in the appeal of the Child is amended in accordance with the draft annexed hereto.

**Dated June 2013**