

Disclaimer: This document is an anonymised version of the specific decision. Each case is considered by SENTW on its individual merits, reflects the law as at the time the decision was made, does not create precedent and should not be relied on as such.

DECISION

Date of Birth:	1998	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement of SEN	
Against Decision of:	The Local Authority	
Date of Hearing:	2013	
Persons Present:	The Parents	<i>Parents</i>
	Parent Representative	<i>Barrister</i>
	Parent Witness	<i>Educational Psychologist</i>
	Parent Witness	<i>Occupational Therapist</i>
	LA Representative	<i>Education Officer</i>
	LA Representative	<i>Educational Psychologist</i>
	LA Witness	<i>Deputy Head Teacher</i>
	LA Witness	<i>Specialist Teacher</i>

Appeal

The Parents appeal 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.

Background

1. The Child is 14 years old and has a diagnosis of high functioning autism and Asperger's Syndrome (AS), displaying 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 secondary school until January 2013 when the Child's Parents placed the Child at School B at their own expense.
2. The Parents sought to secure for the Child "intensive and highly specialist input" to address the Child's difficulties on the basis that the Child had made limited progress over time. They did not consider that Part 2 of the statement adequately described the Child's educational needs, that Part 3 does not specify appropriate provision to meet the Child's needs and that Part 4 should name School B, an independent school as the appropriate placement for the Child.
3. The appeal alleged that School A or any other mainstream school is inappropriate because it would not provide the Child with the levels of specialist teaching and support that the Child requires; does not provide small classes throughout the curriculum; cannot provide on-site speech and

language therapy support and occupational therapy and that the Child's progress had not been adequate.

4. The LA did not dispute that School B could make appropriate provision for the Child, but opposed the appeal on the basis that a placement there would not be compatible with the avoidance of unreasonable public expenditure.
5. During the course of the appeal process, the Child was assessed by an educational psychologist, a Speech and Language Therapist, Occupational Therapist and a Consultant Psychiatrist. Their reports formed part of the tribunal bundle of evidence for consideration in the appeal. The Parents had also arranged an assessment by an Educational Psychologist in 2012 and provided the LA with a copy of their report when they requested an emergency annual review of the statement in September 2012.
6. The Annual Review report dated October 2013 was submitted to the Mediation panel in November 2013 and the decision of the LA recorded as follows: "Amend statement to include the suggested descriptive amendments within the mainstream school and to better reflect the funding situation in the secondary sector. No recommendation to amend Part 4 of the placement."
7. A formal assessment of the Child's cognitive ability was undertaken and in the report dated July 2013 concluded that the Child had a spiky profile of strengths and weaknesses and that based on the cluster scores the Child's General Cognitive Ability fell in the just below average range. The Child's literacy is appropriately developed but numeracy skills were not age appropriate. It was identified that the Child writes at a good speed with their right hand, at 20 words per minute, although the Child has an inappropriate and tight tripod grip. The Child's academic difficulties were recorded as being "usually average to above-average intelligence, good recall of factual information, areas of difficulty include problem solving, comprehension and abstract concepts and may do well at mathematical facts but not problem solving." The recommendations were for all staff working with the Child to have an awareness of AS and appropriate strategies for use in teaching pupils with AS, differentiation of material and presentation, small group teaching, word processing, and specific software such as Sociaeyes to facilitate the development of social interaction.
8. The school report from School A dated October 2012 identified that the Child had partially achieved three IEP targets and it was recorded that the Child sometimes lacks confidence in their own ability to work independently. The Child was identified as expected to attain Level 5 in 10 subjects at the end of Key Stage 3, Level 6 in two and level 4 in one subject.
9. The Child's contribution to the Annual Review recorded the Child's areas of strength as being the ability to work by them self, writing and discussing answers to questions. What the Child found difficult was working in a group, listening and sharing ideas.

10. The specialist teacher report recorded that since September 2012, in Year 9, the Child was no longer accessing the B19 room during break and lunchtime and was socialising with peers on the playground.
11. In the case statement, the Parents' Representative had indicated that the Child required an extended day and residential placement. At the hearing, the Parent Representative confirmed that the Parents were not seeking to persuade the Tribunal that the Child required such provision as an educational need, and that they had no intention of seeking transport arrangements, and would accept responsibility for arranging transport themselves to School B.
12. The report of the Educational Psychologist for the Annual Review dated October 2012, concluded that the Child has been able to maintain an at least average attainment level with the Child's effort grades suggesting that the Child has been motivated although there was some deterioration in effort, attainment or both in some subjects during the summer term. They concluded that the Child is able to access the curriculum with the current level of support but the Child's main challenge is settling down to a task in class and keeping going and not giving up when the Child feels that tasks are too challenging or not of sufficient interest. It was recommended that the use of such of the strategies suggested as were relevant to the Child and advice from the specialist teacher for pupils with language and communication difficulties. Staff working with the Child should use specific strategies commensurate with the Child's current level of development, specific strategies in differentiating the curriculum and helping the Child to access the curriculum. They should also use specific programmes to develop the Child's social communication skills and pro-social behaviour.
13. The Child was further assessed in February 2013 and in the report of March 2013, they conducted further cognitive tests and concluded that the Child's General Ability Index on the WISC IV was in the low average range, describing the Child as "...Very much a mainstream student whose overall cognitive ability falls well within the average range." It was concluded that there is no problem with the Child's mechanical reading skills and they are well above the Child's chronological age, but their reading comprehension score is six years below the Child's mechanical reading score and four years below their chronological age at 10-04yrs. It was concluded that the Child's difficulties arise from the diagnosis of AS and that the Child's progress has tailed off since the Child moved into secondary education. It was confirmed that test results did not show that the Child has significant difficulties with self-confidence and self-esteem, but that the Child has significant difficulties with social interaction at all levels, can become quite anxious and the Child's behaviour difficulties are in the clinically significant range. The Child has a spiky cognitive profile, but is within the broadly average cognitive range with the Child's maths skills below average and has executive problems, particularly in planning, organising and thinking about consequences.

14. Considering the necessary educational provision, it was concluded that without a teaching assistant in mainstream, the Child would be virtually lost but there is a need to consider whether this is now the appropriate way forward for the Child. Reducing support time would reduce the Child's access to the curriculum. They expressed their opinion that the model of delivery where the Child has a full time support assistant had run its course for the Child and proposed another model of provision for the Child. They advocated a small school and small class model where the Child would be with a peer group of similar ability and taught by teachers throughout the day who have been trained to work with pupils with AS; can deliver a social communication/social skills programme, and provide counselling within the school on anxiety management techniques and self-awareness.
15. The Occupational Therapist conducted an occupational therapy assessment of the Child at their clinic in January 2013. In their report dated April 2013, they described the Child as scoring in the below average range with fine motor precision and fine motor integration, with the Child's lowest score being on the balance part of the assessment. A detailed assessment of the Child's speed of handwriting identified the Child as having moderately slow handwriting and requiring monitoring or further investigation. Examples of the Child's handwriting were included within the report. The report did not provide the detail of the Child's sensory processing scores, but the classifications used within the report for all four quadrants place the Child within the middle three classifications and do not indicate that the Child had any scores within the extreme classifications of "much less than most people" or "much more than most people."
16. On the basis of the assessments, it was recommended that the Child should receive at least one weekly session of occupational therapy for forty five minutes to work with the Child in a one to one situation on a withdrawal basis and a further thirty minutes of indirect therapy per week to design, devise monitor and update any occupational therapy targets, recommendations and programmes across the curriculum. It was recommended that at least 30 minutes daily of teaching assistant time to address any of the occupational therapy recommendations and programmes developed by the therapist for the Child with the provision incorporated within the learning environment, one hour of in-service training to all education staff to inform staff of how the Child's difficulties can be supported across the curriculum with particular attention to the Child's sensory processing and modulation difficulties. In response to a query about how the Child was able to cycle and engage in cross-country running competitions, given the level of difficulties they described, they stated that they did not know how long the Child would run or how far, and was unable to comment further.
17. Assessment of the Child's speech and language difficulties were also carried out in the clinic setting in January 2013, and reported in the report dated April 2013. They concluded that the Child has specific receptive and expressive language difficulties with severe difficulties with the Child's knowledge and understanding of the meanings of common phrases,

sayings and idioms and significant difficulties recalling information. They concluded that the Child had a specific language disorder previously unidentified and affecting both the Child's receptive and expressive language skills. On the basis of the assessment, they formed the view that the Child will experience difficulties understanding the language used within the classroom and to extract material presented to the Child within a spoken format. The recommendation was that the Child should be educated by staff who are trained and experienced in working with pupils with AS and who can offer the Child effective language differentiation supported by a speech and language therapist providing direct and indirect input. The direct input from the therapist was recommended as not less than one session per week of not less than forty minutes to facilitate the Child's understanding of non-literal language and improving the Child's ability to extract information from text and delivered within an educational context. The Child was further described as requiring a small social communication group delivered by a therapist for thirty to forty minutes and specific social communication targets and language targets embedded across the curriculum.

18. A Consultant Psychiatrist, assessed the Child in March 2013 and identified the Child's difficulties as being extreme social vulnerability, the Child's passivity in daily life and the Child's expertise in avoiding demands using withdrawal, distraction and non-compliance strategies. The Child has high levels of anxiety around homework completion, academic and novel activities and lacks independence skills, being overly reliant on key adults to manage the Child's needs. They recommended "a holistic and comprehensive package that promotes academic self-esteem and targets' the Child's organisational skills deficit and social anxiety" concluding that "...A specialist "whole school" approach with multi-sensory teaching, small groups and expertise of teachers additionally qualified to teach children with specific learning difficulties with broadly average abilities available throughout the curriculum and on site and integrated therapy support."
19. The cost of the provision at School B was identified as being £11,660 per term including any additional speech and language therapy provision over and above the speech and language therapy provision included in the price. The basic price for the Y10 provision is £19,010 and in Y11, £19,500 increasing to £22,000 per annum in the sixth form. The Parents confirmed that they were not seeking transport costs and would undertake to provide the transport themselves.
20. The LA Representative submitted that the cost of the provision package at School A was the age weighted pupil unit of £2,500 per annum and that all specialist provision was already included within the school's delegated budget and would not amount to any additional cost to the LA. It was confirmed that the cost of a full time teaching assistant was between £18,000 and £20,000 per annum but that the school had a team of Learning support assistants and the Child's provision would be met from within the team without additional cost to the LA. The school does not have access to any direct speech and language therapy provision. Currently, the service

level agreement with the local health authority provides liaison with a therapist from the specialist speech and communication service for the purpose of devising and monitoring programmes for individual pupils. There is no cost to the school for access to the specialist teaching service. It was accepted that the cost of therapy provision was likely to be in the region of £200 per day if commissioned privately. The LA Representative submitted that all of the provision made for the Child at School A could be provided at School Action Plus because the statement is now a monitoring statement only and does not carry with it any additional funding from the LA.

21. The Parent Representative submitted that the statement as drafted was unlawful because it did not identify in Part 3 the provision required to meet the Child's needs. It was the LA's position that the statement was "truthfully drafted" to reflect the LA's current financial position.
22. In closing, the LA Representative submitted that the LA could not be asked to pay for ideal provision for the Child when the needs could be met from within the LA's maintained provision.

Tribunal's Conclusions with Reasons

23. 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. Our conclusions are set out in the following paragraphs:
24. We considered very carefully the evidence of provision required for the Child. The Parents at the outset of the hearing abandoned the claims that the Child required educational provision, an extended day and residential provision, as suggested in the original grounds of appeal, but the two proposals for meeting the Child's special educational needs were significantly different, with the Parents advocating a small school, small class independent model and the LA a fully supported mainstream model. There were no particular disputes about the Child's presenting needs, the only question in relation to provision being whether the LA's supported mainstream provision was appropriate to meet the Child's needs and if so, whether the cost of a placement at School B would be compatible with the avoidance of unreasonable public expenditure.
25. We were concerned that the LA applies blanket policies to the provision of education for children with special educational needs, the specific examples being the description of the financial situation in Part 3 of a statement and the refusal of direct speech and language therapy other than in a clinic situation. Such policies are in direct contravention of the statutory framework and cannot be implemented, if the LA is to comply with the wording of the law. The submission that the statement had been amended to reflect the financial situation pertaining at the moment is also contrary to the statutory scheme, and the LA is reminded of the provisions of the Education Act 1996 and The Education (Special Educational Needs)

(Wales) Regulations 2012 and chapter 8 of the Code of Practice, which sets out in paragraphs 8:33 to 8:41 what should be set out in Part 3 of the statement. We draw attention particularly to paragraph 8:36 which states:

“A statement should specify clearly the provision necessary to meet the needs of the child. It should detail appropriate provision to meet each identified need.”

It is not intended to reflect the financial situation within the area, nor is it appropriate, as was recorded to be the moderation panel’s decision on the 13 November 2012 to;

“Amend statement to include the suggested descriptive amendments within the mainstream school and to better reflect the funding situation in the secondary sector.”

The statement reflects the needs and provision of the child, not a description of what the school can provide or the funding arrangements of the local authority.

26. Having looked at the broad picture, we have concluded that the statement as currently drafted does not reflect the provision required to meet all of the Child’s needs. We have taken into consideration the Parent’s suggestions for amendment, and accept all of the identified objectives set out as appropriate to include in Part 3 because the LA has not proposed nor identified fully appropriate objectives for the Child.
27. The provision made for the Child in School A was the allocation of a full time HLTA for 32.5 hours per week. Within the model we were invited to consider as appropriate for meeting the Child’s needs in the maintained sector, it was not in dispute that the Child would continue to require that level of support in order to maintain the Child’s access to the curriculum. The Child was placed in class groups of up to 22 pupils and had access to the specialist teacher service. It was disputed that the Child had access to a social use of language groups and social communication groups, but not in dispute that the Child would require that provision.
28. We looked at the progress that the Child had made in School A with the provision made for the Child there. The Child’s end of year report and the report for the emergency review indicated that the Child was attaining within the low average range, with the predictions for the Child’s end of Key Stage attainments at a commensurate level. There were no CAT scores setting a baseline for the Child’s attainments when the Child started in secondary school which would have enabled the tribunal more accurately to evaluate the Child’s progress as compared to the Child’s attainments in primary school. The Child’s weaknesses as identified by the support assistant for the review are the same as they have always been and none of the IEPs produced provided outcomes for measurement or comparison. However, the difficulties that the Child has encountered are a reflection of the diagnosed condition and the Child continues to require support and

guidance as well as strategies to address the areas of weakness. The needs identified in 2002 remain the same as identified now but given the increasing need for understanding of non-concrete concepts and use of executive functioning, it is not unexpected that the Child's progress should slow, but the nature of the Child's curriculum at KS4 and possibly beyond suggest that the Child's learning environment and the provision made for the Child needs to clearly match the Child needs as described in Part 2 as enlarged upon during the hearing. The extensive testing undertaken indicates that the Child is where the Child is and that the attainments are commensurate with the Child's identified cognitive ability, suggesting that the Child was making appropriate academic progress with the provision offered to the Child in mainstream up to this point.

29. In terms of the Child's social communication progress, we noted that despite not being invited or being able to join a social use of language group, the Child was reported to be spending their breaks and lunchtimes from September 2012 with peers in the playground, a significant step for a young child who had previously spent every unstructured break in the computer room as a safe haven. We conclude that there is evidence that the Child was making progress in the development of peer relationships and social communication prior to the Child being removed from School A.
30. We considered the provision required to be identified in Part 3 to address the Child's particular areas of difficulty, and conclude that Part 3 as currently drafted by the LA is woefully inadequate. There should be a structured social communication programme available for the Child, devised and monitored by a speech and language therapist. The programme should be delivered across the curriculum and embedded in the context of the Child's academic curriculum to ensure that the Child is able to continue the Child's access to the curriculum and to understand the increasingly complex concepts and language of the GCSE courses. We noted the recommendation that careful consideration should be given to the Child's GCSE choices to avoid overloading the Child with too many language rich subjects and to ensure that the Child has ample time to process and prepare the Child's work in all their subjects.
31. Taking into consideration the nature of the Child's difficulties and the Child's identified pragmatic language difficulties; we have accepted the evidence that the Child requires direct therapy provision in order to address the Child's language and to manage the Child's higher order language skills. We note that the Child dislikes withdrawal from the class group, and at the age of 14, we must take the Child views into consideration. Any provision offered must be acceptable to the Child to ensure the Child's co-operation and buy-in to the strategies and provision offered. We conclude that the therapy should be delivered via the relevant curricular topic and should be subject specific and in the context of the Child's educational provision. The Child will require input from the therapist, but only for one forty minute session per week, supplemented by a language programme embedded into the Child's curriculum.

32. We do not accept that there is evidence to support a need for literacy support, given the Child's very good reading scores despite the Child's comprehension scoring at a lower level, but accept that the Child has an identified weakness in numeracy and does require support to improve their mathematical skills.
33. We consider that the need for small school and small classes, is a different delivery model from that proposed by the LA, and we conclude that the evidence does not support the conclusion that provision can only be made for the Child within a small school: the Child made progress in both academic and social aspects of their learning in a large maintained school and we conclude that with appropriate support the Child could continue to make progress in that situation.
34. The statement should specify in Part 3 that in a mainstream context, the Child continues to require full time adult support for 32.5 hours per week to ensure the Child's access to the curriculum and this provision was not disputed by the LA. The role of the teaching assistant needs to be clearly identified, however, with clear guidance about the role and responsibilities, as well as the identification and implementation of strategies required to address the Child's particular difficulties.
35. We considered the occupational therapy provision recommendations and concluded that an assessment conducted entirely in the clinic situation without observation in the school environment and without taking into consideration the activities undertaken by the pupil cannot be a good basis for drawing conclusions about the impact of the Child's identified difficulties on the Child's access to education. The evidence presented about the Child's physical performance outside the clinic setting reflect that the Child is more able than the Child demonstrated on testing in January 2013 and we prefer the up to date evidence provided of the impact of the Child's difficulties on the Child's ability to undertake age appropriate activities. Furthermore, we conclude that the scores on sensory integration test do not reflect a severity of need that demands direct therapy input and the Child's handwriting is legible, of moderate speed and not at a level that would impact on the Child's ability to carry out their work. For the same reason, we conclude that the Child does not require their own dedicated laptop, the Child's writing and motor difficulties not being at a level where such provision is necessary. We accept that the Child would benefit from being taught keyboard and typing skills, but only in the same way as any other pupil of their age would benefit from the ability to fully access and use information technology.
36. Having identified all the provision to be included in Part 3 of the statement, we considered whether the provision could be made at School A: the provision having been clearly identified in an amended Part 3. We consider that the evidence supports the conclusion that the school has been able and would continue to be able to meet all of the Child's needs. They would do so by putting a team around the child, providing a key person to provide

a link with Parents in the long-term absence of the SENCo and to ensure that the provision for the Child is co-ordinated and carefully monitored.

37. We conclude that the team around the Child within the school and the specialist team around the school would be able to make appropriate provision for the Child to continue to make progress and to achieve in line with the Child's expectations at the end of the Key Stage.
38. We then considered the cost of the placement and whether a placement at School B would be compatible with the avoidance of unreasonable public expenditure? We did not accept the submission of the LA that the only cost to the LA would be the AWP of £2,500 per annum. There is a need for full time support for the Child, and the cost of that adult support is identified as being between £18 and £20,000 per annum. It cannot be argued that the cost of that provision is already funded from the school, because case law provides that the delegated funds remain the expenditure of the LA until such time as it is spent by the school and the evidence both in the bundle and at the hearing was that School A had been unable to retain members of staff at the end of the summer term 2012 because of the uncertainty about the Child's continuing placement there. An additional LSA would have to be appointed to provide the support that the Child requires and we find that the cost of that support would be in the region £20,000 per annum.
39. We have already found in favour of some speech and language therapy provision for the Child and the LA do not provide such therapy in a school context. The cost of the direct therapy provision would be a minimum of £200 per term (on the basis that the estimate of £200 per day would provide six hours of direct therapy) making a total of £600 per annum. The total cost of a placement at School A would therefore be £23,500 per annum. The Parents undertook to arrange the transport to School B so that there is no additional cost of transport there.
40. On the basis of our findings and the calculations set out above, the placement at School B is a lesser cost than that at School A, even including the cost of a residential placement. We did not accept the Parents Representative's submission that there is no saving to the LA because it cannot claw back the money from the school, because the money remains that of the LA until spent, and there is provision for school budgets to be reclaimed if unspent in any financial year.

Order

Appeal allowed in part.

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

- 1) In Part 2, by amending the statement to reflect the amendments set out in the attached working document.

- 2) In Part 3, by amending the statement as set out in the attached amended working document.
- 3) In Part 4, by replacing the existing with the following: "An independent school placement on the undertaking of the Parents to pay for transport to School B. Otherwise, a mainstream school, School A."

Dated July 2013