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## **Decision**

<b>Date of Birth</b>	1999	
<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>	2010 and 2011	
<b>Persons present:</b>	The Parent	<i>Parent</i>
	Parent Representative	<i>SNAP Cymru</i>
	Parent Witness	<i>SNAP Cymru</i>
	Parent Witness	<i>Witness (2010)</i>
	LA Representative	<i>Head of inclusion</i>
	LA Witness	<i>SENCO School A</i>
	LA Witness	<i>Educational Psychologist (2011)</i>

### **Appeal**

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

### **Preliminary Issues**

This appeal hearing commenced in November 2010 and was adjourned for the reasons set out in the Decision (first decision) dated November 2010. This Decision should be read in conjunction with the first decision.

In essence the reason for adjourning the hearing of November 2010 was to enable an educational psychology assessment of the Child to be undertaken to provide a current picture of the Child's functioning and difficulties. This report dated December 2010 was compiled by an Educational Psychologist who also attended the adjourned hearing.

The Parent sought to admit further documents in evidence at the adjourned hearing. The LA did not oppose the application. This evidence complied with the relevant criteria and accordingly the tribunal admitted the following documents in evidence under regulation 33(2), namely:

- i. an email dated December 2010 sent by the Parent to the tribunal secretariat
- ii. a risk assessment report compiled by School A in December 2010
- iii. a copy of an ESTYN inspection report dated September 2010 on School B
- iv. a copy of a brochure for School B Outreach Service
- v. an email sent by the acting head teacher of School B to SNAP Cymru

The tribunal again met with the Child prior to the hearing in the presence of their Parent, Parent Representative and LA Representative.

### **Facts**

1. The relevant facts are set out in the first decision. The Parent continues their appeal against parts 2, 3 and 4 of the statement of special educational needs dated May 2010.
2. Upon the filing of the psychological report the President directed the LA, pursuant to regulation 23, to inform the tribunal whether or not the authority wished to propose any amendments to the statement under appeal in light of this new assessment. This led to the preparation of a working document worked upon by both parties proposing amendments to parts 2 and 3 of the statement.
3. The parties were more or less in agreement with the majority of parts 2 and 3, although still at odds in relation to the school to be named in part 4. The Parent maintained their preference for a placement at School B whilst the LA argued that School B could not meet all of the Child's special educational needs and that those needs were being met by the Child's placement in the resource base attached to School A.

### **Tribunal's Decision with Reasons**

We have carefully considered all the written evidence and submissions presented to the tribunal prior to the hearing and the oral evidence and submissions given at the hearings in November 2010 and at the adjourned hearing in January 2011.

We have also the relevant provision of the Code of Practice for Wales 2002.

We conclude as follows:

- I. The LA proposed various amendments to parts 2 and 3 of the statement to reflect the conclusions and recommendations of the Educational Psychologist in their educational psychology report. The Parent and their representative agreed most of the amendments and after further discussions at the hearing part 2 of the statement was agreed in its entirety. The tribunal is content to adopt the amended version of part 2 which now provides a current picture of the Child's special educational needs.
- II. The Parent proposed some amendments to part 3 of the revised statement. The LA accepted some of these revisions at the hearing. An additional objective was inserted providing for the Child to continue to attain and develop appropriate life skills and the provision to meet this objective will be through regular structured teaching of life skills.

- III. As is reflected in part 2 of the statement the Parent is concerned that the Child has little sense of danger. It is noted that the Child was withdrawn from school by their mother for a period after they had left the school premises undetected in November 2010. The tribunal was informed that the Child was found by one of the Parents friends some time later wandering the streets in the company of another. As a result of this incident the school undertook a risk assessment. A copy of this assessment was produced in evidence. The Child admitted when meeting the panel members that they had absconded from school, but that was the only occasion on which they had done so. The amendment sought by the mother suggests that the school is to provide a safe environment which prevents the Child from leaving the school premises unauthorised. As was explained by the LA it would be impossible to prevent the Child from leaving should they choose to do so. Apparently on the previous occasion the Child had left through a fire door. It was agreed however that this provision could be included in the statement provided that the words "*it is intended*" are inserted in the sentence, which in effect provides that the LA will use its best endeavours to ensure that the Child does not abscond, as is reflected in the terms of the risk assessment.
- IV. The Parent Representative sought the deletion of the word "*mainstream*" from some of the part 3 provision. Whilst the LA argued for the retention of the word "*mainstream*" the tribunal does not consider that the inclusion of this word is necessary as the provision that is made relates to the setting in which it is provided. The tribunal is therefore content to accede to the request and to delete the word "*mainstream*" on the two occasions that it appears.
- V. Another proposal made by the LA is that a statement is inserted in Part 3 to the effect that the Child should wear glasses and that the Child is to attend school regularly and on time. These are not issues that relate to their special educational needs and are not a description of provision made by the LA in any event. Both these references are therefore deleted from the proposed statement.
- VI. This therefore leaves part 4. As indicated in the first decision the onus for establishing why parental preference cannot be met lies with the LA.
- VII. The educational psychology assessment concludes "The Child scored within the below average range of ability for their age and verbal (language based) sub tests and in the well below average range of ability for their age in the performance (practical problem solving) sub tests of the WASI. The Child's full scale score was on the fifth centile which is considered within the well below average range of ability for their age. The Child is also below age expectations in literacy and numeracy."

The Educational Psychologist's recommendations are reflected in the LA's proposed revised statement. They conclude in their report by stating that a placement at School A resource base is meeting the Child's needs.

- VIII The educational psychology report was shown to the acting head teacher at School B and their views are reflected in an email sent to the Parent Representative. In this email it indicates that it is the view that School B could not make the provision specified in that report and further more tellingly states "School B is a school that caters for pupils with severe and profound and multiple learning difficulties, and it is quite clear from the report that whilst the Child's scores are well below average the Child does not fit this criteria."
- IX. The Parent Representative drew the attention of the panel to a letter written dated June 2010 which they argue demonstrates that it was the view at that time that the Child could be accommodated at the school. The Head teacher at School B met with Jack and the Parent in October 2010 and a record of the meeting is contained in the bundle. The acting head teacher records that admission to the school is dependent upon an educational psychology assessment confirming that the Child meets the relevant criteria for admission. The Head teacher expressed the view in that meeting that they had grave reservations as to School B's suitability for the Child. Having seen the educational psychology report the Head Teacher now confirms their view in an email to the Parent Representative in January 2011. The tribunal does not consider there to be any inconsistency in the views expressed by the Head teacher. The Head Teacher bases their initial opinion on the descriptions of the Child given to them by the Parent. The Teacher then clarifies their views having met with the Child, and confirms that their reservations are well founded having had sight of the report.
- X. The Parent Representative argued that it was inconceivable that a special school such as School B could not make the provision recommended by the Educational Psychologist. The Representative further suggested that the outreach service provided by School B could be utilised to enable the Child to gain access to a mainstream peer group from time to time as deemed appropriate. The tribunal does not accept this argument as in effect what the Head teacher is stating is that the school could not make the provision specified for a child who does not fall within the requisite criteria for admission to the school.
- XI. The tribunal considers that the information contained in the ESTYN report confirms the judgement of the acting head teacher, namely that School B is not suitable for the Child's age, ability and aptitude and the special educational needs set out in part 2 of the revised statement. The tribunal therefore finds that School B cannot meet the Child's needs and that parental preference cannot be met.
- XII. The Child has been attending the resource base attached to School A since September 2010. The Child's attendance record is poor, having

attended for seventy four sessions out of a possible one hundred and thirty four. The Child's absences include fifteen authorised absences and forty five unauthorised absences. The SENCo at School A described that on some occasions when the Child attends they refuse to do the work set for them. There are other days however when the Child is completely the opposite; the Child can be compliant, hardworking and can display an ability to work without instruction. The SENCo believes however that the Child's sporadic attendance is hampering development, making it difficult to consolidate the skills acquired. The Child must attend regularly as this underpins the entirety of their education. It is also an aspect that concerns the Parent and perhaps this issue can be addressed in a collaborative manner by the LA and the family.

- XIII. The Parent expresses concern about the lack of opportunity for the Child and how the restrictions imposed by the risk assessment exclude the Child from many activities. The Parent believes that one of the benefits of attendance at School B would be the opportunity to achieve and to attain recognition for those achievements. The Parent highlighted that the Child is an able swimmer, that the Child likes to paint and has a good singing voice. The Parent complains that the Child is not given the opportunity to demonstrate those skills. It is clear however because of regular absences the school are unable to assess whether or not the Child's behaviour is suitable to enable them to partake in many activities. The Parent has also indicated to the school that the Child is not at present fit to undertake any physical activity although this has not yet been supported by medical evidence. If the Child enjoys activities such as swimming painting and singing then it may of benefit if the school is able to offer some extra curricular activities to recognise and develop the Child's interest in those areas.
- XIV. The tribunal recognises the difficulties faced by the Parent and the LA in securing the Child's regular attendance at school and it may be the case that the family would benefit from some non educational support.
- XV. The tribunal therefore allows the appeal in so far as amendments are to be made to parts 2 and 3 of the statement, but the appeal in relation to part 4 is dismissed.

**ORDER:**

Part 2 and Part 3 of the statement will be amended in its entirety. The amendments attached.

**Dated February 2011**