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Decision

Date of Birth:	2003	
Appeal of:	The Parents	
Type of Appeal:	Refusal to issue a statement of SEN	
Against Decision of:	The Local Authority	
Date of hearing:	2012	
Persons Present:	The Parent	<i>Parent</i>
	Parents Representative	<i>Solicitor</i>
	Parents Witness	<i>Educational Psychologist</i>
	Local Authority Representative	<i>Principal Officer SEN</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>School Improvement Officer</i>

Appeal

The Parents appeal under Section 324 of the Education Act 1996 against the decision of the LA not to make and maintain a Statement of Special Educational Needs (the Statement) in respect of the Child.

Factual Background

1. The Child is 8 years old. The Child lives with their parents and 3 siblings. The Child initially attended School A, from September 2007, and then transferred to their present school, School B, from September 2011. School B is a fee paying school.
2. The Child has been assessed and found to have specific learning difficulties i.e. dyslexia. As a result the Child has found it difficult to acquire literacy skills and has also had some difficulties with numeracy. Concerns have been expressed about the Child's self-esteem, but the Child is happy at their present school. Concerns have also been expressed that the Child has an auditory processing difficulty and Irlen's Syndrome, but there has not been a diagnosis of either. The Child has previously had speech and language therapy, but has been discharged from that service.
3. The Child's parents originally appealed against the LA's decision not to assess the Child. The LA did not maintain their opposition to this appeal, and did in due course assess the Child. Having completed this process they decided not to issue a Statement in respect of the Child, but rather to issue a Note in Lieu. They confirmed their decision in a letter to the parents dated the July 2011. The Child's parents appeal that decision as they believe the Child requires a Statement in

order to have all the support the Child requires.

Preliminary Issues

4. Applications to admit late evidence were made on behalf of each party. In the case of the Parents application we were able to consider the application under Regulation 33 (1) and (2) of the Special Educational Needs Tribunal Regulations 2001. The documents had been served more than 5 clear working days before the hearing, could not have been available prior to the extended case statement date, and in our view did not impede the efficient hearing of the appeal. We therefore admitted into evidence a report by the Parents' witness, Educational Psychologist, a report by an Occupational Therapist and information from the Childs present school. In the case of the LA application the referral from a Specific Learning Difficulties teacher they sought to have admitted was dated November 2011 and therefore predated the extended case statement date of December 2011. As such we could not admit it under paragraph 2 of the Regulations because it was available before the case statement date, and could have been filed with the case statement. We found that we could not admit it either under paragraph 3 of Regulation 33 as this case could not be said to be wholly exceptional and neither could we find that there was a serious risk of prejudice to the Childs interests if it were not to be admitted.
5. Prior to the hearing commencing we saw the Child with both representatives and the Parent. The Child came across to us as a shy child who still had a difficulty on one occasion with speech sounds and on another with their sentence construction. However, the Child had no difficulty understanding the questions put to them or in communicating what the Child wanted to say to us. It was clear that the Child enjoyed, and felt they were better at, non-literacy based subjects as compared to literacy based ones.

Tribunal's Findings with Reasons

6. In arriving at our decision we have taken account of all of the evidence we have read and heard, section 324 of the Education Act 1996, and the Special Educational Needs Code of Practice For Wales.
7. Section 324 reads:
"If, in the light of an assessment under section 323 of any child's educational needs and of any representations made by the child's parents in pursuance of paragraph 27, it is necessary for the local educational authority to determine the special educational provision which any learning difficulty he may have calls for, the authority shall make and maintain a statement of his special educational needs."
8. In this case an assessment has been completed, and the Childs parents seek a Statement. It has been argued on behalf of the parents that section 324 places an onus on the LA in these circumstances to make and maintain a Statement, i.e. that once it has conducted an assessment and confirmed that the Child has special educational needs it has to then make and maintain a Statement.

9. We do not accept the construction placed upon the section by the Parents. A Statement need be maintained only if it is "necessary for the local educational authority to determine the special educational needs which any learning difficulties he may have calls for" in light of the assessments and representations. The LA has to make a decision as to whether it is so necessary, and this connotes an element of discretion on its part. We are reinforced in this view by paragraph 8:12 et seq and 8.15 et seq of the Code, which clearly underline the discretion placed on the LA as to whether to issue a Statement or whether to issue a Note In Lieu.
10. Accordingly, we have to consider the same test as the LA as for the purposes of the Appeal, placing ourselves in its shoes. In doing so we have borne in mind the examples set out in paragraph 8.13 of the Code, and the need to take account of the arrangements for funding schools in the LA area as required by paragraph 8.14.
11. We have had the benefit of evidence in written and oral form from two educational psychologists, the parents witness and the LA witness and in a written report from an Occupational Psychologist. They all confirm that the Child has specific learning difficulties that make the acquisition of literacy skills particularly difficult for her: she is dyslexic.
12. The parents argue that the Child difficulties require a place at a special school because principally of the Child's lack of progress in acquiring literacy skills. It was argued that the present school was second best when viewed against this submission, but was the best compromise available as no appropriate special school was available locally.
13. We note the provision that the Child has been receiving since September 2011 as set out in the information provided by School B. She is receiving 3 hours of support on a withdrawal basis aimed at the Child's Individual Education Plan (IEP) targets, in class support in 5 English and 1 Maths class a week, use of an assistive listening device to help screen out background noise, use of a comprehension framework to support the Child's reading, scribing and auditory comprehension tasks, and differentiation strategies.
14. We have also noted the progress that the Child has made whilst at School B with the above level of support, and in particular the standard scores measured in the Suffolk reading and single word spelling test, (82 and 85), which are nearer in our view to the norm than the Special Educational Needs range.
15. We also note the content of the September 2011 IEP. The IEPs at the Child's current school are in our view much more effective than those in the Child's previous school. They have been realistically formulated to achieve measurable success. The IEP demonstrates progress in relation to the targets set and in relation to the Child's starting point upon entry to the school. Of the six targets she achieved four, partially achieved one and exceeded the sixth.

16. We have to have in mind paragraphs 6.48 and 6.89 of the Code. It is our view, based on the above information from School B that at present the Child has made adequate progress in that the Child progress “matches or betters previous rate of progress, with the support the Child is receiving.
17. Bearing the above progress in mind, now that the Child is receiving more appropriate provision, we have difficulty accepting that the Child’s difficulties are as severe as the Parents witness contends. The Child is not achieving at a level commensurate with their average cognitive ability, but that does not equate to it being “necessary” for the LA to determine the Child’s educational provision. The Child will probably always have difficulties with their literacy skills. At present, however, the Child is making adequate progress taking account of their specific learning difficulties.
18. We also take account of paragraphs 5.20 and 5.21 of the Code that a graduated response to Special Educational Needs should be applied. It is our view that at present a graduated response has been applied, in that the amount of support for the Child has been increased since September 2011, and to date that has resulted in “adequate progress.” It is only if it becomes apparent that the Child is not making adequate progress that consideration will need to be given to whether further provision is required. We have concluded that at present this is not the position.
19. We heard evidence from the LA that it could make adequate provision to meet the Child’s needs at a maintained primary school and that it successfully met the needs of children with similar difficulties. In particular we heard from the School Improvement Officer, the LA’s witness, as to the specialist assistance that was available for children with dyslexia in the area. We accept the LA evidence.
20. Further, we do not accept that a larger class size for the Child would necessarily make the Child’s needs more difficult to meet. The presence in the Child’s class of children achieving at a similar level to the Child’s could be an advantage in relation to group work and their self-esteem.
21. Taking all of the above into account, we do not find that it is necessary for the LA to determine the provision needed to meet the Child’s learning difficulties, and this appeal is dismissed.

Order

The Appeal brought by the parents in respect of the Child is dismissed.

Dated March 2012