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Decision

Date of Birth:	2001	
Appeal of:	The Parent	
Type of Appeal:	Refusal to Assess	
Against Decision of:	Local Authority	
Date of Hearing:	2010	
Persons Present:	The Parent	<i>Parent</i>
	Parent Witness	<i>Educational Psychologist</i>
	Parent Witness	<i>Clinical Psychologist</i>
	LA Representative	<i>Statementing Officer</i>
	LA Witness	<i>Head teacher</i>

Appeal

The Parent appeals under Section 329 of the Education Act 1996 against the refusal of the Local Authority to arrange an assessment of the special educational needs of their Child.

Issues

The Tribunal identified to the parties at the outset of the hearing, those issues upon which it intended to focus in the course of the hearing. Subject to any further relevant issues raised by the parties, the initial list was as follows:

- i) Identification of the Child's special educational needs;
- ii) The Child's current provision;
- iii) The Child's progress with their current package of provision;
- iv) What further provision/information is sought?

Facts

1. The Child is 9 years old and has a diagnosis of Asperger's Syndrome and dyslexia. Since 2007, the Child has attended School A, a maintained mainstream primary school. The school is one of 10 primary schools in the area which are currently the subject of a comprehensive review a plan to reduce the schools to four by 2012. The Child is in Year 4.
2. There have been significant concerns about the Child's progress in school for some considerable time. The Child was initially placed in School B

where the medium of instruction was Welsh. During the Child's time there, difficulties were noted with the Child's emotional behaviour, communication and social communication skills.

3. The Child was first referred to the Educational Psychology service in 2006 and following an assessment using the Boxall Profile, the Educational Psychologist took prompt action and made a referral to the Social and Communication Assessment Team. Work was undertaken by a Clinical Psychologist with the Child. In January 2007 the Child transferred to School A.
4. In November 2009, the Parent formally wrote to the LA asking them to arrange a statutory assessment. The Parents main concern was that despite receiving 15 hours a week of LSA support, the Child was making "slow progress". They confirmed that at the chronological age of 8.6 years, the Child was yet to score on a test of their reading age. The Child was unable to produce work without adult support and had been kept in a Year 3 group rather than moving on in September with the Child's Year 4 peers.
5. The LA considered the request and in March 2009, notified the Parent that they did not consider that a statutory assessment was necessary because the Child was "... not attending a special school and does not have very significant needs that require (sic) a statement", and this is now the LA's criteria for making a statement for a child.
6. The Parent appealed against the refusal. At the hearing, the Parent explained that in their view, the Child is not making satisfactory progress, despite the provision put in place by the school and the Child's anxiety levels are increasing with signs that the Child's behaviour is becoming more challenging. The Parent was concerned that insufficient information was available about the Child's auditory processing difficulties and the Child's significant social communication difficulties and the Child's inability to make and maintain peer friendships. The Parents main concern was that the frustrations generated by the difficulties were building up with a "pressure cooker" effect that would cause the Child over time to display significantly challenging behaviours.
7. The LA opposed the appeal on the basis that all of the Child's needs could be met within the school without a statement. The evidence presented by the Head of School A was that the school were confident that all of the Child's difficulties had been identified and that the Child was not displaying difficulties with auditory processing or behaviour in school. In oral evidence, the Head Teacher described how the school had gained experience in teaching children with ASD and had at one time had 10 pupils with an ASD diagnosis on roll. They stated that the school knew the Child well and knew how to work with the Child, but acknowledged that the Child had made limited progress despite the significant support the Child received at the school-based stages of the Code of Practice.
9. The Educational Psychologist gave evidence that the Boxall Profile is intended to assess a child's emotional state rather than educational issues

and they further confirmed that they had not undertaken a full assessment of the Child's cognitive ability during the period that they have been working with the Child. In a letter dated October 2008, The Educational Psychologist had confirmed their view that the Child "is not making progress in their reading and spelling ability" and concluding that the Child was therefore dyslexic. At the hearing, they confirmed that they had relied on the Child's lack of progress in reading and spelling to identify the Child's dyslexia, and acknowledged that they had not undertaken any further testing which would show that the Child was now making progress.

10. During the hearing, the LA Representative and Head Teacher, gave evidence about the provision proposed for the Child during the forthcoming year, explaining that a package of targeted support was to be put in place for the Child which would involve providing the Child with access to a Learning Support Assistant for up to 10 hours per week, withdrawal into the special needs class for literacy every day for one hour; one hour per week of withdrawal to complete a dyslexia friendly programme looking at phonics and word building and another hour following a precision teaching programme delivered by an LSA. The LA Representative expressed the view that the Child had made only limited progress with full time one to one support, and that the school had taken the view that more targeted provision was necessary.
11. It had been decided that the Educational Psychologist, would set up a social communication group and would deliver weekly sessions to the group to address social communication difficulties in a small group of 6 pupils for one hour per week.
12. The Head Teacher confirmed that none of the detail of the programme had been shared with the Parent prior to the hearing, as it was the first week of term and the Child's Individual Education Plan had not yet been amended to reflect the changes proposed to the Child's provision. A meeting had been held with the Child's Parents during the week prior to the hearing, but the information about the proposed provision had not then been available.
13. The Head Teacher gave evidence that the Child had made progress particularly with behaviour in school but that it is small progress, which was why it had been decided that the Child's provision should be changed for the forthcoming academic year. There was no documentary evidence produced to support the submission that the Child had made measurable progress in school.
14. In their closing submissions, the LA confirmed that they were confident that the Child's needs could be met within the school based stages and confirmed that the intention was to consider the need for a statutory assessment in May 2011 to provide more information for the Child's secondary transfer in September 2012. The LA provided a detailed description of the type of transition planning offered by the LA to all children who require more than the usual secondary transfer visits.

Tribunal's Conclusions with Reasons

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. We concluded that:

- A. From the evidence presented by the parties, we noted that the Parent has for some significant time flagged to the school and to the LA their concerns about the Child's auditory processing difficulties. On the basis of the evidence presented, we concluded that on a balance of probabilities, there may be some outstanding issues not yet resolved about the full extent and nature of the Child's difficulties. Although the Child's diagnosis of Asperger's Syndrome was made following a multi-disciplinary assessment, the effect of the Child's condition upon their functioning cannot, in our view, be clarified until a full assessment is made of the Child's ability and potential and a view taken on the impact on the areas of difficulty. Despite the fact that the school are not currently reporting significant difficulties with the Child's behaviour, we noted the Head Teacher's comment that the school know the Child, and whilst the Child's difficulties may be contained in primary provision, there must be a clear picture of the Child's needs and the provision necessary to meet those needs in advance of the Child's transfer into secondary education.
- B. Despite the fact that the school have put in place a high level of support during the past school year, the progress that the Child has made cannot be described as appropriate. Neither party produced corroborative evidence to support the submission that the Child is making progress, and whilst the Head Teacher was adamant that the Child was making "small progress" without supporting evidence to show the nature and extent of that progress, we cannot be satisfied that such progress is sufficient or appropriate.
- C. We were impressed with the package of provision that was set out as being proposed for the Child during the forthcoming academic year but noted that despite the fact that the school term had already started when the hearing took place, the proposals had not been communicated to the family nor condensed into an individual education plan or other concrete form prior to the hearing. We were also concerned about the LA's reference to "targeted provision" being put in place for the Child, since such provision should have been available prior to the Child's penultimate year in primary school.
- D. The documentary evidence in this case was very limited, the panel not having before them any individual education plans, school reports or teacher reports to substantiate or dispute the oral evidence given about the Child, the Child's provision or progress. On the evidence presented however, we have concluded that there are facts of the Child's learning difficulties which require further investigation to identify the extent of the Child's needs, that the provision to date has not been sufficient to remedy the Child's difficulties and that the Child may require more specifically targeted provision to ensure that the Child attains to their potential.

- E. We noted that School A has an ASD-friendly designation, but are concerned that the Head Teacher's comments about the school being able to make provision because they know the Child, and can work with the Child may be masking the true extent of the Child's difficulties. We were conscious of the fact that the Child will shortly be transferring to a secondary placement, and in order to enable the Child to make progress it is essential that all of the Child's difficulties and the appropriate provision to meet the Child's needs are known to that school.
- F. The Child has received a high level of support in the past, having access to full time support from an LSA last year and despite this making only very limited progress. We are concerned that there is no clear baseline from which any progress can be measured and that there appears to have been a lack of clarity about the full extent of the Child's needs in order to provide targeted support. The fact that the Child's new IEP targets were not already in place at the beginning of term and that information about the provision intended for the Child was not available to provide to the Parents one week prior to the start of term is indicative of a lack of focussed planning for the Child.
- G. The description of the transition planning in the school cluster was impressive; however, we conclude that it is necessary to fully identify all of the Child's needs and provision in order for the Child to benefit fully from the transition plan.

Order:

Appeal allowed.

It is ordered that the Local Authority do arrange a statutory assessment of the special educational needs of the Child.

Dated September 2010