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## **Decision**

<b>Date of Birth:</b>	1998	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Refusal to Assess	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of Hearing:</b>	2011	
<b>Persons Present:</b>	Parent	<i>Parent</i>
	Parent	<i>Parent</i>
	Parents Partner	<i>Support</i>
	Parents Witness	<i>Teacher – School A</i>
	LA Representative	<i>ALN Officer</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>ASD Team Leader</i>
	Observer	<i>SENTW Member</i>

### **Appeal**

The Parent appeals under section 329 of the Education Act 1996 against the refusal of the Local Authority to comply with their request to arrange an assessment of their Child. The Child's father is also named as a joint appellants.

### **Preliminary Issues**

The LA applied for the admission of late evidence under regulation 33(2) in the form of:

- an education psychology report dated November 2010
- A letter written by the Parent dated November 2010 with copy letters and a report attached. This report was prepared in March 2010 for the purposes of Private Law Children Act proceedings between the parents in the County Court.

The Parent did not object to the admission of the above documentation in evidence except for the report.

The regulation 33(2) criteria were satisfied and the tribunal admitted the Educational Psychologist's report and the letters from the Parent in evidence.

As the report was prepared for the purposes of Family Court proceedings the disclosure of the report into these proceedings is governed by the provisions of the Family Proceedings Rules. These rules provide that there can be no disclosure without the permission, in this case, of the County Court. Such permission has not been obtained and accordingly an application to admit the

report in evidence could not be considered. Similarly the tribunal was not able to allow the parties to discuss the contents of the report for the same reason.

The LA Representative in the circumstances applied for an adjournment of this hearing to enable an application to be made to the County Court for permission to disclose the report. The LA Representative made the application on the basis that the report contained important information that supported the contentions of the LA.

The Parent opposed the application to admit this evidence on the basis that the report had been prepared in March 2007 and was therefore dated and that it had not been prepared for the purposes of a special educational needs tribunal.

The tribunal refused the application for the adjournment because the report is now almost four years old and because there was sufficient other more recent evidence available to enable the panel to come to an informed decision.

The Parent had through their representative filed additional evidence in the form of two documents headed 'Negotiations' compiled together with a précis Estyn report on School B. The LA had no objection to the admission of this documentation in evidence and as the criteria in rule 33(2) were satisfied the tribunal admitted the documentation in evidence.

## **Facts**

1. The Child was born in August 1998 and is now twelve years and five months of age. The appellants are the Child's parents.
2. Having been educated at home by the Parent for several years the Child began attending School C in September 2007 as a year 5 pupil, but was withdrawn in or around April 2008 by the Parent. In September 2008 the Child began attending School D where the Child was moved back a year from their chronological age. In October 2009 the Child enrolled as a boarder at School A and was placed into their chronological age year group. The Child is now a year 8 pupil at that school.
3. Whilst at School C the Child received assistance at School Action Plus.
4. The Parent requested a statutory assessment from the LA in early 2010. The local authority notified the Parent in March 2010 of its decision to refuse to carry out an assessment.
5. In April 2010 the Parent made a formal request to the Local Authority to arrange a statutory assessment of the Child.
6. In July 2010 the LA notified the Parent that it did not consider an assessment to be necessary as the Child's needs could be met at School Action Plus in a mainstream secondary school. The letter stated that the LA considered that those needs could be met with the following provision :

- i. outreach support from the ASD team
  - ii. support from within the school's delegated resources
7. In September 2010, the Parent launched their appeal against the LA's decision not to assess. Another Parent is also named as a party to the appeal although their position differs from that of the other Parent.
8. In considering this matter the tribunal may either dismiss the appeal or direct the LA to undertake a statutory assessment.

### **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 hearing.

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

We conclude as follows:

1. Section 329 of the Education Act 1996 provides :
  - (l) *Where:-*
  - (a) *the parent of a child for whom the local authority are responsible but for whom no statement is maintained under section 324 asks the authority to arrange for an assessment to be made in respect of the child under section 323,*
  - (b) *no such assessment has been made within the period of six months ending with the date on which the request is made, and*
  - (c) *it is necessary for the authority to make an assessment under that section, the authority shall comply with the request*
2. In this case the LA takes the view that a statutory assessment is unnecessary on the basis that the Child does not meet the LA's criteria for a statutory assessment and that as such the LA is of the view that all the Child's identified needs can be addressed within a mainstream school at School Action Plus.
3. The LA Representative explained the LA's decision by reference to the relevant criteria adopted by the authority. The tribunal is not however bound to follow such criteria and refers to the statement set out at paragraph 7.36 of the Code of Practice, namely :

*"Decisions must be made by local education authorities in the light of all the circumstances of each individual case and always in the closest consultation with parents and schools."*

4. It is a significant factor in this case that several assessments of the Child have already been undertaken. There is contained within the bundle an educational psychology assessment completed in February 2008 and two reports from a speech and language therapist April 2008 and November 2009. There is also a speech and language therapy report dated June 2010 from a Specialist Speech and Language Therapist with the University Health Board. The most recent assessment is contained in the report completed in November 2010 and admitted as late evidence into these proceedings.
5. There is a general consensus that the Child is of average intellectual ability. The Educational Psychologist highlights in their report that:

“There are no current concerns regarding the Child’s access to the curriculum other than in terms of a discrepancy between the Child’s general ability and verbal expression of their ideas and understanding and the Child’s current reading and spelling levels. The most recent formal assessment of reading and spelling carried out by the school using the WRAT gave standardised scores of 87 and 83 respectively. (On average a standardised score would be expected to fall between 85 and 115) These formal scores indicate that the Child’s current reading and spelling levels are a little delayed but would not presently meet the LA’s access criteria for additional literacy support at School Action Plus. The access criteria employed are based on guidance provided in the Special Educational Needs Code of Practice for Wales”.
6. The Parent accepts that the Educational Psychologist’s report is a fair assessment of the Child’s current functioning and ability.
7. The tribunal also has the benefit of the school report from School A for Spring 2010, which shows that the Child has settled well at school and is considered to be making excellent progress. The end of term report for Autumn 2010 was available to the parties, although neither party had sought to admit the same in evidence. The tribunal was informed that this report also reflects good progress by the Child. The Educational Psychologist considers that the Child has made over two years progress during the last two years.
8. The Parent acknowledges that overall the Child had settled well at school despite the challenges that they had initially faced as a boarder and it is intended that the Child remains at School A if finances permit.
9. The Parent attributes the progress that the Child had made to the additional support that is provided to them within the school. The support provided at school is outlined in a report to the LA prepared by the SENCO at School A. This support is summarized as follows :

*“The Child attends a specialist provision school where all subjects are taught in small classes, by teachers trained in meeting the needs of pupils with a variety of SPLDs. The Child has a normal curriculum plus weekly:*

*2 lessons thinking skills  
1 lesson paired reading  
1 lesson RTL (OT)  
SULP in a small group  
2 individual support lessons for literacy and curriculum support*

*There is a whole school approach to SPLDs which is multi sensory and geared to pupils with STM deficits. The Child has enhanced pastoral support both in school and in House as a boarder.”*

10. The Parent reported that the Child continues to experience difficulties and has recounted a recent occasion when they spent four hours at school reassuring the Child and calming them down. The Parent also praised the efforts of the teachers working with the Child. A teacher at School A confirmed that the Child had settled well and had made significant improvement. The teacher had not seen any sign of anxiety on the Child's part although they reported that the Child had been upset during the last week. The Teacher however attributed this episode to the Child's anxiety regarding this tribunal hearing. The Child attended the hearing with a view to meeting the panel. The Child decided at the last moment however that they were unable to do so. The tribunal is grateful to the Child for attending and the Child should be reassured that the decision not to meet with the panel has no bearing on the outcome of the appeal.
11. The Parent told the tribunal that they believe that the Child requires a statement to ensure that the additional support that the Child needs is always available to them. The Parent expressed the view, supported by their Partner that the Child always needs programming to do things and if the support is taken away then problems will develop and the Child will not make progress. The Parent did not identify any additional support that they considered to be necessary at this time.
12. The parties are largely in agreement as to the Child's strengths and difficulties and to the nature of the support that is required. The Educational Psychologist considers that School A is providing the type of support and differentiation that would be provided in any mainstream school for a pupil with the Child's profile. The Educational Psychologist considers that the targets outlined in the speech and language therapy reports are all targets that are considered to be integral to good classroom management and appropriate differentiation. They further believe that the Child would respond much better to support integrated across the curriculum and believes that the best way to build on the Child's current progress is to ensure daily practice for short periods.
13. The Child's father agrees that it will be beneficial for the Child to remain at School A and also agrees that the Child had made good progress there. They emphasised that they were proud of their Child's progress and that the priority now is to ensure that the Child has a stable period of education in a positive environment. The Child's father states that they have not

experienced the Child displaying many of the difficulties attributed to the Child and that in their view the main difficulty is that the Child lacks confidence. This is also a view shared by the Educational Psychologist. The Father believes that the Child is now coping with change and is also able to make friendships. It is noted that the Teacher at School A commented that the Child is now helping other boarders to settle at school.

14. The parental case statement describes the Child as :

*“..... a sensitive young child with a range of reported anxieties and obsessions, some sensory difficulties, some behaviours overlapping with features arising from autistic spectrum disorder (ASD) and a profile consistent with non verbal specific learning difficulties and associated dyslexia and dyscalculia.”*

The Child has reportedly been given a diagnosis of Asperger's Syndrome, although upon enquiry it is unclear how this diagnosis arose. In a second report it works on the basis of a diagnosis of Asperger's Syndrome and refers to a diagnosis having been made in July 2007. It is unclear by whom and in what circumstances this diagnosis was made. The Parent confirmed however that no multi disciplinary assessment had ever been undertaken and there is therefore some doubt as to the accuracy of such a diagnosis. The LA takes the view, given that the Child consistently scores within the average range, that the Child does not have the profile of a child with dyscalculia or dyslexia. It is not however necessary for this tribunal to make any findings in relation to any possible diagnosis or to attach labels to reported difficulties. The focus must be on the Child's current functioning and progress and in establishing whether or not the Child's difficulties are preventing them from accessing the curriculum and proving to be a barrier to their educational progress. The parental case statement is selective in its references to the relevant statutory provisions and the case law and does not address the issue identified above.

15. Indeed on the basis of the various reports already undertaken it could be argued that a statutory assessment has already been undertaken with the exception of a medical report.

16. Paragraph 7.34 of the Code of Practice states :

*“In deciding whether to make a statutory assessment, the critical question is whether there is convincing evidence that, despite the school, with the help of external specialists, taking relevant and purposeful action to meet the child's learning difficulties; those difficulties remain or have not been remedied sufficiently and may require the LEA to determine the child's special educational provision.”*

Thereafter paragraphs 7.35 continue:

*“In considering whether a statutory assessment is necessary, the local authority should pay particular attention to:*

- evidence that the school has responded appropriately to the requirements of the national curriculum*
- evidence provided by the child’s school, parents and other professionals where they had been involved with the child, as to the nature, extent and cause of the child’s learning difficulties*
- evidence of action already taken by the child’s school to meet and overcome those difficulties*
- evidence of the rate and style of the child’s progress*
- Evidence that where some progress has been made, it has only been as the result of much additional effort and instruction at a sustained level not usually commensurate with provision through Action Plus.”*

17. The evidence in this case overwhelmingly shows that the Child has settled well in school and is making excellent progress. It should also not be forgotten, as highlighted by the LA Representative, that the Child is young and has had a period of being educated at home, has attended three different schools, is now attending school as a boarder and has also experienced the breakdown of their parents’ marriage. Those are factors that will certainly have impacted to a degree upon overall development. Now that the Child has experienced a period of stability and consistent education the Child is making progress and has the potential to make further progress.
18. It is understandable that the Parent should be anxious that the support required by the Child to sustain their progress is maintained but there is no reason to suggest that such support will not continue at School A. As indicated by the Educational Psychologist it is the type of support that any mainstream school would be expected to provide to a child with their identified needs.
19. The Child is to be congratulated on their efforts and on the progress that they have made. The Child’s special educational needs are currently being met and this is not a case where the LA should be required to undertake a statutory assessment.

**ORDER:** Appeal dismissed

Dated January 2011