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Decision

Date of Birth: 2005
Appeal of: The Parents
Type of Appeal: Refusal to Assess
Against Decision of: Local Authority
Date of Hearing: 2010

Appeal

The Parents appeal under s.329 of the Education Act 1996 against the decision of the Local Authority not to carry out an assessment of the special educational needs of their Child. The Parents were notified of the Local Authority's decision by a letter dated April 2010.

Preliminary Issues

The Local Authority did not submit a Statement of Case by the statutory deadline of 7 September 2010. Neither did it formally indicate that it did not oppose the appeal. In line with paragraphs 15 and 29 of the Special Educational Needs Tribunal Regulations 2001 it was decided that the appeal should be decided on the basis of the papers that had been submitted to the Tribunal by the Parents.

Facts

1. The Child is 5 years and 4 months old.
2. The Child was born with a chromosomal re-arrangement affecting Chromosomes 5 and 11. In a report dated July 2007, a Consultant Community Pediatrician stated that this is likely to be the cause of the Child's medical difficulties and developmental difficulties. The report indicates that the Child has congenital scoliosis (curvature of the spine), and an arterial septum defect (hole in the heart), the Child also has an ectopic left kidney, and is small in stature. The report also suggests that the Child has mild global developmental delay with more marked speech and language delay and locomotor delay.
3. The treatment of the Child's scoliosis will require regular and repeated surgery through the course of childhood. In due course the Child is also likely to undergo surgery to correct the hole in the Child's heart.
4. In their Case Statement the Parents describe how the Child's speech and language is limited to some signs and a small number of spoken

words. The Child's spoken language can be unclear. This is also reflected in the Child's School Review Meeting report of November 2009 and Summer Report of 2010. The Parents believe that the Child's understanding of language is good and the report of November 2009 says that the Child can understand simple instructions and that the Child understanding has improved when combined with gesture. The summer 2010 Report also describes how the Child happily babbles throughout the school day. The November 2009 Report indicates that the Child has attained performance levels in English and Maths of P1 (ii) and the teacher states that they feel that the Child is capable of more. The Child is described in school reports as being able to walk slowly and as having poor coordination. The Parents state that the Child remains in nappies at the present time.

5. The Child has been attending the Observation and Assessment Unit at School A since September 2009. The Case Statement of the Parents states that there are about 8 pupils in the Unit and the Unit is staffed by a teacher and teaching assistant. It also states that School A has quite recently undergone a period of organisational change and that the Child's Class Teacher is new to the School. As the Local Authority did not submit a Case Statement there is no further detailed information about School A or the Unit where the Child is placed in the papers.
6. In their Case Statement the Parents indicates that they believe the Child's needs are such as to require a statement of special educational needs. They consider that to date there has been no detailed assessment of the Child's needs and the support that the Child requires. They believe that this is necessary. They also feel that there needs to be a clearer focus upon the Child's long term development and that because of the complex nature of the Child's difficulties School A is not able to do this.
7. They are concerned that the Child will loose time from school due to ongoing surgery. They believe that in order to address this there needs to be a clear and coordinated plan that maps out appropriate provision and support. They say that the Local Authority and School have not to date provided this. They argue that the Child's needs are such that they require intervention from a variety of medical and educational sources and that in order for the intervention to be effective there needs to a coordinated approach to this. They state that this has been lacking and they feel that School A is not able to deliver this approach without ongoing support from the Local Authority.
8. They are concerned that after the Child started at the Observation Unit the Child was not assessed by the speech and language therapist responsible for working with School A and had no speech and language therapy programme for a considerable period and that this was only secured following their complaint. They argue that the Child requires direct 1:1 speech and language therapy support and this has not been available to date. Further they consider that the Child requires additional physiotherapy support and possible occupational

therapy support, including a review of the physical aids that the Child requires in educational environment.

9. The letter of refusal to carry out an assessment from the Local Authority of 21 April 2010 states that the Local Authority decided not to carry out an assessment because it believes that the Child's special educational needs can be met appropriately in the Observation Unit at School A. It states that the Unit is specialised provision and that the Child is able to attend without the need for a statement of special educational needs. It indicates that the Child's progress at school will continue to be monitored at the School Action Plus stage of the Code of Practice for Special Educational Needs.
10. The Case Statement of the Parents indicates that they met with representatives from the Local Authority to discuss the refusal to assess the Child. They had the opportunity to outline their concerns about the Local Authority's decision and the parties agreed to attend a multi agency meeting. The Parents state that they were led to believe that the Local Authority would document that meeting and notify the Tribunal of the agreement that had been reached. The Local Authority appears not to have acted upon this in spite of a number of requests from the Parents to do so. The Parents point to this as evidence that the Local Authority cannot be trusted to deliver on its agreements and this they claim gives further support for the need for a statement.
11. The Child is still very young and their views are not recorded in the papers. The summer report of 2010 from the Class Teacher describes how the Child initially found the transition from home to school difficult but states that the Child is now happy and confident in the classroom environment. The Child is also described as a determined little child by their teacher. The Parents describe the Child as brave and cheerful.

Tribunal Conclusions and Reasons

In reaching the decision the Tribunal carefully considered the written evidence submitted by the Parents. The Tribunal also considered the relevant sections of the Education Act 1996 and the relevant provisions of the Special Educational Needs Code of Practice for Wales.

1. Under s.329 of the Education Act 1996 the Local Authority is required to comply with a parental request for statutory assessment if no such assessment has been made within 6 months preceding the request and it is necessary for the Local Authority to make an assessment. Under s. 323 (2) an assessment is considered necessary if a child has or probably has special educational needs and it is or probably is necessary for the Local Authority to determine the special educational provision which any learning difficulty they may have calls for.
2. Taking all of the above into account the Tribunal decided that it was necessary for the Local Authority to under take a statutory assessment of the Child's special educational needs.

3. In making this decision the Tribunal took into account the fact that the Observation Unit at School A is specialist provision and that it is not necessary for the Child to have a statement of special educational needs to attend.
4. In addition, although the Tribunal only had limited information about the Unit and specific provision for the Child there, the Tribunal was impressed by the quality of the two school reports and the IEP provided in the papers. The Tribunal also noted that the report in 2007 which indicated that the Child was making forward developmental progress.
5. However, whilst the medical reports and the school reports in the papers state that the Child has global developmental delay, in the view of the Tribunal the reports do not offer a sufficiently clear picture of the nature and degree of the Child's developmental delay at this current time so as to properly inform the provision that is now required to address the special educational needs. The Tribunal considered that a full multi professional assessment of the Child's current attainments and needs, including an assessment from an educational psychologist, is needed in order to do this.
6. Moreover, whilst it was stated in the 2007 Report that the Child was making forward developmental progress, in the School Report of November 2009 the Child's Class Teacher states that they are sure that the Child is capable of more than is reflected in their Performance Levels at that time. Also in their Case Statement, the Parents say that the Child's understanding is good and their social interactions are good, and on this basis they believe that the Child has potential if the Child is given the support they need. In the view of the Tribunal the papers presented do not provide a current or clear assessment of the Child's progress over time and neither do they provide any assessment of what can reasonably be expected in regard to performance. Whilst the Tribunal acknowledged the view expressed in the report of July 2007 to the effect that it is difficult to accurately predict the rate of the Child's future developmental progress, the Tribunal agreed with the contention of the Parents that there needs to be as clear a picture as possible of the Child's functioning and of the Child's needs so as to help inform both short term and long term objectives for development. This will then enable professionals involved with the Child to monitor and review the Child's progress more effectively and tailor provision accordingly. In order to achieve this, the Tribunal concluded that a full statutory assessment was needed.
7. The Tribunal was of the view that the Child has a range of special educational needs, which when combined with significant medical needs are likely to result in the Child requiring considerable support from educational professionals, a variety of therapists and medical professionals. For the support that the Child needs to be effective the Tribunal agrees with the Parents view that the provision will need careful coordination. Even though the Observation Unit is specialist provision, in the absence of any detailed information from the Local

Authority to the contrary, the Tribunal was of the view that the level of coordination needed in the Child's case is likely to go beyond that which can reasonably be delivered by a school alone utilising its own resources and multi agency networks. The evidence from the Parents demonstrates that they have already encountered difficulties in securing speech and language therapy provision for the Child whilst the Child has been at the Unit and it would appear that this was not resolved through the School's own contacts with the local Speech and Language Therapy Service but as a result of parental complaint. Again, in the absence of information from the Local Authority to the contrary, the Tribunal was of the view that Local Authority coordination and oversight may be necessary in this case.

8. The Tribunal considered that it is highly regrettable that the Local Authority chose not to engage properly with the statutory appeals process. It felt that it should draw the attention of the Local Authority to the powers that the Tribunal has to make orders for costs against a party to tribunal proceedings as set out in Regulation 40 (1) of the Special Educational Needs Tribunal Regulations 2001, and in particular paragraph (c) which empowers the Tribunal to make an order for costs where an authority has not delivered a case statement. In the event that it proves necessary for there to be further proceedings in this case the Tribunal would expect the Local Authority to engage properly with the statutory process and any failure to do so could result in the Authority running the risk of a costs claim being made against it.

Order

The Tribunal orders that the Local Authority is to arrange a statutory assessment of the Child's special educational needs.

Dated November 2010