

Disclaimer: This document is an anonymised version of the specific decision. Each case is considered by SENTW on its individualised merits, reflects the law as at the time the decision was made, does not create precedent and should be relied on as such.

Decision

Date of Birth:	2001	
Appeal of:	The Parent	
Type of Appeal:	Refusal to Assess	
Against Decision of:	The Local Authority	
Date of Hearing:	2010	
Persons Present:	The Parent	<i>Parent</i>
	Childs Grandfather	<i>Grandfather</i>
	LA Representative	<i>Representative</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.

Preliminary

1. The Parent made an application for submission of late evidence in respect of a speech and language therapy department assessment report dated June 2010. Despite the fact that the report had been in existence for some time prior to the hearing, the Parent had not submitted a copy in evidence but considered on reflection that it would be helpful because the Child had received a block of therapy at the end of the summer term 2010.
2. The LA agreed that the report should be available to the Tribunal in evidence and did not oppose the application.
3. The Tribunal considered the application and allowed the report to be submitted in evidence.

Background

4. The Child is 9 years old and has a diagnosis of Developmental co-ordination difficulties (dyspraxia) and difficulties with language and communication and behaviour. The Child currently attends School A, a maintained mainstream primary school.

5. The Parent appealed against the LA's refusal to arrange an assessment of the Child's special educational needs on the basis that the Child's needs were not being met with the additional provision of two hours of support per week in school. The Parent was concerned that the Child is becoming increasingly aware of their difficulties in communicating and integrating with peers and following the issues surrounding the Child's social and emotional difficulties being highlighted by a child psychologist in July 2009, the Parent made a formal request for a statutory assessment of the Child's needs.

Evidence

6. The LA arranged for an Educational Psychologist to observe the Child in school in May 2010. The Child was described by staff at the school as a polite, well-behaved and co-operative pupil. The Child was receiving additional support for the development of their literacy skills, but can be reluctant to use the equipment which is designed to help them to overcome the difficulties caused by dyspraxia. The Child does not like to be seen as different to their peers. The Child was described as having a particularly good relationship with one pupil, but found it difficult during unstructured times, seeking the company of adults and spent the duration of the break time on their own walking up and down the playground staying close to the school building.
7. The school report identified that the Child was then in a class of 21 pupils where a TA support is provided 5 mornings a week. In addition, the Child has additional support for 2.5 hours per week as part of a withdrawal group developing reading and spelling skills. The Child's attendance record is good and the Child appears happy in school. The Child's reading age was assessed as being at the 7 years 2 months in May 2010 a gain of 5 months since the previous test in September 2009 and spelling age 6yrs 7mths, an improvement of 1 year from the previous test. The school did not identify any behavioural difficulties within the school context.
8. The speech and language therapy assessment undertaken in May 2010, confirmed that the Child had been known to the department since April 2006 and has been receiving therapy in blocks of paired and individual therapy sessions since 2007. The Child was described as a polite and co-operative pupil who has a developmental speech sound disorder with some co-occurring difficulties understanding and using spoken language for learning and social the Child's receptive language was assessed to be at about the 8th centile, but the therapist underlined the fact that the Child's ability to understand in the classroom was likely to be poorer. The Child's expressive language skills fell on the 1st centile indicating a need to develop the Child's expressive language skills enabling the Child to use a wider range of vocabulary. The Child was described as having made slow steady progress with the Child's speech sound development and speech

sound disorder was described as characteristic of verbal dyspraxia and can limit the Child's intelligibility out of context to others. The Child's social communication difficulties were not observed during the assessment but concerns about the Child's increasing isolation by their peers were noted by the class teacher and the Child's own perception is that their peers hate them. The Speech and Language Therapist confirmed that the Child is clearly having difficulty using language socially and suggested that this will become even more apparent following secondary transfer. The report did not identify any recommendations or conclusions following the assessment.

9. One of the Parents main concerns was that the school were not taking the Child's difficulties seriously and were not ensuring the inclusion with the Child's peers. The Speech and Language Therapist was concerned that the school were not putting in place the recommendations made to address the Child's dyspraxia difficulties. They gave evidence that they had not received a copy of the Child's individual education plan and had not been invited into school to discuss the targets identified for the Child.
10. Another area of concern was the Child's inability to play with peers and the Child's need for prompting by adults in order to be included with them. The Parent described how the Child could be "nasty" at home and how the Child's language became much more difficult to understand when the Child was upset or anxious. The Parent confirmed that the Child was still exhibiting unusual responses to food touching on their plate but that an assessment by a Child Psychiatrist had concluded that the Child did not meet the criteria for a diagnosis of Autistic Spectrum disorder. They were concerned about incidents of self-harming and gave evidence about an incident when the Parent had taken the Child into school to show the Head how the Child had "scrammed" them self on their body. The Parent attributed this to the Child's frustration. The Parent gave evidence that the school had suggested that the Child should be considered as requiring support by reason of social, emotional and behavioural difficulties alone.
11. The Parent described how the Child had started menstruating, but that despite the school being told about this and their attention being drawn to the Child's immaturity, they had been offered no help and were unable to manage their own personal cleanliness causing the Child significant distress and the Parent to keep the Child home from school for the duration of their period.
12. The Child's maternal Grandfather described how the Child can become aggressive when upset or anxious and that this affects the Child's ability to express them self leading to greater frustration for the Child. The Grandfather drew to the tribunal's attention to the fact that the Consultant Psychiatrist, was of the view that the Child required support on the basis of the level of the Child's dyspraxia difficulties alone.

13. The LA's representative submitted that the LA had a great deal of information about the Child's difficulties, having received reports from the Occupational Therapist, the Physiotherapist, the school, the Educational Psychologist's observations, behaviour support service and speech and language therapy service. They suggested that the school could support the Child's social and emotional needs by providing the Child with access to the nurture group, but explained that whilst the Child is afforded access to the nurture group, the Child does not choose to avail them self of it. Similarly, they have received recommendations about strategies and equipment to help the Child with their dyspraxia, but chooses not to use them because the Child does not like to be perceived as different to their peers. On the day before the Tribunal hearing, the school had identified a small group of pupils who could work with the Child on direct social skills work over a period of six weeks. The Parent was unaware of the proposed changes to the Child's provision because it was the beginning of term and the school had not yet had an opportunity to finalise all of the arrangements.
14. The LA's position is that sufficient is known about the Child's difficulties to ensure that the Child is receiving appropriate provision within the school. The LA's Representative submitted that the additional provision now in place to address the Child's needs would ensure that appropriate progress could be made.
15. At the start of the autumn term, the school were proposing to continue the Child's withdrawal provision three times a week in a small group to support literacy and numeracy and to have access to the wellbeing officer. The LA Representative conceded that there was no monitoring of the use of the DCD pack in school but that they had been told that it was being used during PE lessons.

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. The Child has special educational needs which have been identified in part and which are being addressed at school at School Action Plus. Despite the amount of additional provision being made to address the Child's needs, the progress made by the Child is small and the evidence presented from school and from the Educational Psychologist confirms that the gap between the Child and peers is increasing.
- B. We noted in the school's evidence that the Child's behaviour in school is exemplary, however, we also noted that the Child's social communication difficulties have been regularly noted, but no positive

action taken to address this area of difficulty. The school were sufficiently concerned to request a statutory assessment and we take the view that simply addressing the Child's literacy and numeracy difficulties is not sufficient to provide the Child with the tools to make adequate progress.

- C. We were not satisfied that all of the Child's difficulties have been identified and given the Child's increasing frustration with their inability to make social progress with peers and the Child's clear social intent, but inability to integrate with them, it would appear that appropriate provision isn't yet in place to address this significant area of difficulty. Given that the Child is due to transfer to secondary school in September 2012, it is important that the Child receives support to address their social communication difficulties sooner rather than later. It may be that on completing a full statutory assessment, the level of necessary support may be available from within the school however until there is a clear identification of the Child's difficulties in this area, the appropriate provision cannot be clearly identified.
- D. We were surprised with the LA's Representative's confirmation that the Child is provided with "access" to the nurture group and to the wellbeing officer, but is not encouraged or supported to access them. The Child is also allowed by the school to refuse to use the equipment provided by the OT to assist them in overcoming the difficulties presented by the DCD. We were not presented with evidence that the school are proactively seeking to encourage the Child's participation in the nurture group or work with the wellbeing officer, and this may be because the Child's behaviour in school is not yet causing any difficulty. The Child's increasing frustration with the Child's language skills may be indicative of a need for clearer recommendations and conclusions by the speech and language therapist in order to identify the appropriate approach for addressing these difficulties.
- E. We did not have in evidence any individual education plans or annual school reports which might assist us in concluding that the progress that the Child is making is appropriate for the Child's level of ability. We have therefore concluded that on a balance of probability the progress that the Child is making is not appropriate and that the LA should arrange an assessment of the Child's special educational needs.

Order

Appeal allowed.

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

Dated October 2010