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## **Decision**

<b>Date of Birth:</b>	1999	
<b>Appeal of:</b>	The Parents	
<b>Type of Appeal:</b>	Refusal to issue a statement of SEN	
<b>Against Decision of:</b>	The Local Authority	
<b>Date of hearing:</b>	2011	
<b>Persons Present:</b>	The Parents	<i>Parents</i>
	The Parent's Representative	<i>Solicitor</i>
	The Parent's Witness	<i>Psychologist</i>
	Local Authority Representative	<i>Solicitor</i>
	Local Authority Witness	<i>Psychologist</i>
	Local Authority Witness	<i>Witness</i>

### **Appeal**

The Parents appeal under Section 325 of the Education Act 1996 against the decision by the Local Authority (the LA) not to make a Statement of Special Educational Needs in respect of their Child.

### **Facts**

1. The Child was born in 1999 and is presently 12 years of age. The Child lives at home with their parents and younger sister. The Child has a diagnosis of Dyslexia, first made in 2008, although a report made in 2006 highlighted a classic Dyslexic profile.
2. The Child attends School A. The Child started there in September 2010, and has therefore attended for 4 terms.
3. At the Child's last primary school the Child received specialist support for their Dyslexic difficulties. An Educational Psychologist, concluded in a report dated the November 2009 as follows:  
"The Child is making good progress but this is only as a result of additional support and a great deal of effort by the Child and school staff". The Child's final primary school report stated that the Child had made "good progress" in reading (see page 102 in the bundle.) The Child had also made satisfactory progress in Maths and good progress in science, (see page 104.)
4. It is agreed that the Child is happy and settled at their present school. It is also agreed that the Child is of broadly average cognitive ability.

## **Tribunal's Findings with Reasons**

### **Preliminary Issues**

5. Applications were made on behalf of both parties to admit late written evidence. For the LA this comprised of the Child's end of year report and two examples of work. We considered Regulation 33 of the Special Educational Needs Tribunal Regulations 2001. We admitted the report upon the basis that this was a wholly exceptional case and unless the evidence was admitted there was a serious risk of prejudice to the interests of the child. The report had been referred to in the Notice of Appeal and in the LA's Case Statement. All parties therefore had it in mind. Due to difficulties with the postal system it did not arrive with the LA Case Statement. We thought it was important to have the information contained in the report, which came, of course, from all of the Child's teachers. We did not admit the examples of work, however, as it was conceded on behalf of the LA that these were of far less importance in the case, and we could not find that the Child's' interests would be prejudiced if we did not admit them.
6. The parents wished a report from an, Educational Psychologist, dated the 11/11/2011, to be admitted. This had been received by the Tribunal and the LA more that 5 days before the hearing date, and was not available as at the Case Statement date. We found its admission would not impede the efficient conduct of the hearing. We admitted it pursuant to Regulation 33(2).

### **Decision**

7. In arriving at our decision we have taken into account Section 325 of the Education Act 1996, the Special Educational Needs Code of Practice for Wales and all of the evidence we have read and heard.
8. The most recent testing of the Child's level of achievement in literacy and numeracy is contained in a report dated the 14/4/11. It reveals that at an age of 11 years and 9 months, using the WIAT-11, the Child attained the following age- equivalent scores: word reading at a 7.0 year old level, spelling at a 7.4 year old level and numerical operations at a 7.4 year old level. The Child's reading comprehension was at a much higher level: that of an 11 year old. Save for the latter result these indicate significant delay. They show the Child is not yet at a functional level of literacy or numeracy despite their average ability.
9. In addition we heard that the Child has difficulty in organising themselves and with recording work in written form. The Child becomes anxious as a result. The Child is disinclined to respond verbally at length in class in case the Child is then required to record what they have said in writing.
10. We note that the Child has a short window of opportunity to achieve the level of literacy and numeracy necessary to successfully access the GCSE curriculum. In this sense the Child's needs are acute.
11. The current provision the Child receives comprises 2 one hour sessions a week in a group of 7 or 8 children and two one hour sessions of specific literacy support with the school SENCO, who is qualified as

a specific learning difficulties teacher. This amounts to a total of 4 hours a week. The Child also has access to a Learning Support Assistant (LSA) in the class of 23 for 30 sessions per fortnight. There was little evidence that the Child made use of the LSA. There was evidence that the Child can be quite passive and tends not to ask for help. The Child's parents told us that the Child would in fact welcome help with explanations of the work required, recording work, and recording homework.

12. The Child has an Individual Education Plan (IEP), which is contained within the bundle, but it is lacking in detail, has no achievement criteria to allow for effective review, does not set out strategies to be deployed, and was not compiled in consultation with the Child and the parents. As such it did not have the appearance of a working document and did not comply with paragraph 5.68 of the Code of Practice.
13. We considered the reports of the educational psychologists in the papers and the oral evidence of the psychologists. It was put to the Parent's Witness on behalf of the LA that the way they had carried out some of the subtests from the WISC-II bank of tests and then used these in combination with other previously obtained test scores obtained by using the WIAT-II was most unusual. We find that it was other errors in the report were also pointed out. We disregard these test results. Nevertheless, as set out above, we find that the Child's literacy and numeracy are significantly delayed. In coming to this finding we have also taken into account the Suffolk reading test results provided by the school. We note this is an older testing regime and is not nearly as comprehensive or widely used as the WIAT-II used. The Suffolk test results were clearly at odds with the other test results, which were consistent with the other results provided in the other Educational Psychology reports. We consider the test results provide by to be the more reliable.
14. It was argued on behalf of the parents that the Child required:
  - i) To access the Specialist Dyslexia Unit at the school.
  - ii) To have 20 to 30 minute sessions daily with a specialist Dyslexia qualified teacher on a 1 to 1 or small group basis, depending on the content of the work being carried out.
  - iii) Support in all literacy based lessons from a dyslexia trained LSA.
  - iv) Close monitoring on a weekly basis to establish that the Child is making progress and retaining what has been learnt over time.
15. It states at page 56, "The Child's literacy and numeracy programmes should be delivered through a flexible combination of individual and small group teaching" We noted that the school SENCO accepted, when asked, that in order to meet the Child's present acute needs, both an LSA in literacy based lessons, and daily specialist teaching sessions, were required. They also accepted that an LSA who was provided specifically to meet the Child's needs would act as a focal point and reference point for other staff in literacy based subjects, which would be of assistance. (Some of the comments in the Child's most recent school report tend to suggest not all staff are as aware of the difficulties as they should be.) It was also stated that whilst the Child was in their view making progress with the current level of provision, if the Child had daily literacy and numeracy provision the Child's progress would be better. (We do not regard the latter as luxury provision in this case, but rather as provision

that is necessary to meet the Child's needs.) The parents' suggestions were also supported by the evidence of their witness.

16. Given the above evidence, the Child's present levels of literacy and numeracy, average cognitive ability, the previous progress that was being made with specialist support at primary school, and the now acute nature of needs, we accept that the level of provision suggested on behalf of the Child's parents is appropriate.
17. The LA failed to provide any convincing evidence that this level of support could be provided currently from within the school's resources. The overall impression we had was that the Child would not receive the level of support the Child needs without a Statement of Special Educational Needs. We therefore direct that the LA should make and maintain a Statement for the Child. This would place a clear responsibility upon the LA to meet the Child's needs as specified in the Statement.
18. We have also been invited on behalf of the parents to consider whether the Child is appropriately placed in the present class. We regard this as being outside our remit in relation to this Appeal and therefore we do not make any finding as to this.

### **CONCLUSION AND ORDER**

19. Accordingly, we direct the Local Authority to make and maintain a Statement of Special Educational Needs in respect of thier Child.

**Dated the December 2011**

**Chair**