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DECISION

Date of Birth: 1997
Appeal of: The Parents
Type of Appeal: Refusal to Assess
Against Decision of: The Local Authority
Date of Hearing: 2012

Persons Present: The Local Authority Learning Advisor
The Local Authority Principal Educational Psychologist
The Local Authority Teacher

Appeal

1. The Parents appeal under section 329 of the Education Act 1996 against the refusal of the Local Authority to carry out an assessment of the special educational needs of their Child.

Preliminary

2. As the Parents had not arrived by 10:00 a.m. The Clerk to the Tribunal was therefore asked to ring the Parents to ascertain whether or not there was a problem. The Clerk reported to the Panel that they had been informed by the Parent that they were not going to attend as they “did not feel up to it” and did not have any support. The Panel discussed the matter and felt that it was important that the matter should proceed as the Child was not at present in receipt of full time education. The Panel decided to proceed with the hearing under regulation 31 of the Special Educational Needs Tribunal Regulations 2001 (the Regulations).
3. The LA made an application for admission of late evidence pursuant to Regulation 33(3) of the Regulations. The application was made in respect of the following documents:-
 - A report submitted by a social worker previously involved with the family;
 - Attendance records;
 - Reading assessments;
 - Example of written work completed by the Child upon entry to secondary school;
 - Educational Psychologist report noting unexplained anomaly in test results;
 - Minutes of meetings demonstrating how parental concerns were noted and addressed;
 - Medical correspondence;
 - Report/comment sheet from teachers of the Child
 - Additional provision offered to pupil;
 - Notification to parents of LA’s decision not to initiate Statutory Assessment in July 2008.

The Panel was informed that new information had come to light recently. The Parents had previously been resident in another local authority and had involvement with a social worker, who had prepared a report on the Child. The report was not available any sooner due to the fact that the social worker's permission had to be obtained to disclose the report. As a result the report did not come to hand until last Thursday, leaving only 4 clear days before the hearing. The LA stated that the report from the social worker was important as it identifies various issues which were not known to the LA previously. The remainder of the reports had been collated since the last adjournment. The Panel asked the parties to withdraw so that they could consider whether or not to accept the late evidence. The Panel decided that they needed to see the report from the social worker especially in light of the fact that neither the Parents nor the Child were present at the hearing. Consequently the Panel found that there were exceptional circumstances and that unless the evidence was admitted, there would be a serious risk of prejudice to the interests of the Child. The parties were called back to the room and made aware of the decision of the Panel. However, the Chair did point out that the majority of the reports could have been made available sooner and would not have been accepted in the normal course of a hearing if all the parties were present. The Local Authority Representative acknowledged this and apologised for the late documentation.

Facts

1. The Child is 14 years old and lives at home with their parents. At the present time the Child is not attending school. From the application, the Child is described by the Parents as having a variety of difficulties, namely:-
 - Irlen's Syndrome
 - Difficulty copying from the board and remembering instructions and messages
 - Short attention span
 - Frustration
 - Aggressive behaviour
 - Anxiety, poor comprehension and fatigue
 - Daily behavioural problems
 - Glue ear in both ears
 - Bowel problems
 - Asthma
 - Swollen legs
 - Panic attacks when worried
 - Requires day to day help with doing up buttons, zips and shoelaces.

2. The Child was attending High School, but the Child's attendance record was poor. In the first term of Year 7 it was 67.8% but had deteriorated to 46% by the end of Year 7. The Panel was informed that the school had no concerns regarding the Child's ability to learn. Indeed in the teacher's report of the 24/11/2009 all the teachers refer to the Child as a quiet pupil who was a good student. However, in the same report they all refer to the problem of frequent absences, which made it difficult for the Child to catch up with work and which meant that the Child had to re-integrate with friendships groups. A letter dated July 2010 from a Consultant Paediatrician, stated that they felt that from "a

medical point of view there was no reason that the Child couldn't be in school much more than the Child had been in the last few months".

3. In November 2009, the Parent requested a statutory assessment of the Child, which was refused. It was recommended that there should be close liaison between the Parent and the school to ensure that the Child's difficulties were understood and supported and that the Inclusion Welfare Officer should be involved to address the Child's attendance at school.
4. On the 9th February 2010, using the Wechsler Objective Reading Dimensions (WORD), it recorded the following results for the Child:-

	<u>Standard Score</u>	<u>Centile</u>
Word Reading	63	1 st
Spelling	71	3 rd
Reading Comprehension	71	3 rd

It was stated that it was difficult to know why the Child's results on more recent tests were at a much lower level.

5. In March 2010, The Parent requested the involvement of the Speech and Language Therapy Service (SALTS) as they believed that the Child had a problem and this was preventing the Child from learning as the Child should. Two assessment appointments followed and a third was arranged where strategies were recommended and practiced to assist with dysfluency.
6. Two further appointments were arranged with SALT for the Child, but neither was attended. The Parent apparently explained that the Child was not happy to attend any further appointment as the Child was finding the content boring and did not like the strategies being practiced.
7. In September 2010, the Child's reading and writing progress was studied by an assessment of the Child's phonological awareness. It was determined that the Child found it more difficult to process information about letter sounds and several recommendations were made for the school to implement. The school provided extra reading group provision in which the Child did not engage. The Child was also encouraged to attend a "Nurture Group" of which the Child attended two sessions.
8. There was a meeting on the 5th November 2010 at the Parents request, when the ALNCO was able to address some of the Child's concerns and answer queries and strategies and additional provision were discussed and agreed. In November 2010, a second parental request for statutory assessment was received by the LA. This was refused on the 17th February 2011 as the LA felt that the Child's level of achievement and needs were not sufficiently significant and actions were recommended that could support the Child.
9. In January 2011, the Child refused to attend school. As a result, the Child was given a part time placement at The Learning Centre. This is a portfolio pupil referral unit for students who feel unable to access full time mainstream schooling. The panel was informed that the facility is a short term small group provision that offers a nurturing environment where self esteem and confidence are addressed and developed and the pupil is prepared for a gradual return to mainstream education.

10. The panel was informed that the Child coped well in the Learning Centre, but still had a number of absences. When the Child did attend the Learning Centre, the Parent also went virtually all the time and stayed in a separate room on the premises. The panel was informed that the Parent expressed concern with the fact that the Child enjoyed attending the Learning Centre and wondered how the Child could be re-integrated into a mainstream school setting.
11. In September 2011, the Child went to High School and asked to go back to the school. The school got in touch with the Learning Centre and following some planning meetings it was agreed that there should be a phased return for the Child to the School. It was agreed that from the 5th October 2011 the Child would spend half their time in the Learning Centre and half in High School. By the 14th October 2011, the Child had returned full time to the High School.
12. Shortly after full time reintegration to High School, concerns regarding the Child and their attendance re-emerged. Various meetings were held concerning the Child. The Parent had become concerned that the Child was being bullied. The Teacher informed the panel that the Child had a small group of friends that had remained friends and while there had been an incident with some of the younger boys pulling ties, they did not believe that the Child was bullied. At present, the Child is not attending school.

Tribunal's Conclusions with Reasons

13. In arriving at our decision we have taken into account Section 329 of the Education Act 1996, the Special Educational Needs Code of Practice for Wales (the Code) and the evidence presented both in the papers and orally at the hearing.
14. On the 3rd October 2011, the Child was tested on the Neale Analysis of Reading Ability and had a standardized score of 88 on accuracy and 86 on comprehension, a reading age of 10.01 on accuracy and 9.07 on comprehension. As stated, the Principal Educational Psychologist could not explain why these results were lower than in the February 2010 test. It was confirmed that a full assessment had not been undertaken of the Child's current functioning and while there could be some possible explanations for these results there was no clear picture. As a panel, we were concerned that there was no clear monitoring of the Child's progress or indeed lack of progress.
15. The Panel was also concerned that the information provided did not give a clear picture of the Child, including the Child's views. There was no indication whatsoever of what the Child might want to achieve from education. While everyone seemed to agree that the Child had ability and could attain GCSEs, there was no plan in place to outline how the Child was to achieve this from the current educational position and what would be the next appropriate step to get the Child back into school and accessing the curriculum. The Child's needs had not been identified and the Panel was concerned regarding this as the Child is at a pivotal point in their education. It was stated that it is essential for the Child to develop the coping strategies that the Child needs to access education now and for any further education, but there was no plan to put this in place. The Child needs to get the right education and strategies in place for the Child now and the Panel was disappointed that there was no clear plan to achieve this goal.

16. The Panel also found that there seemed to be a lack of involvement of other agencies and consequently co-ordination of all the aspects of the Child's life which might be affecting the Child's education. The evidence produced did indicate that there may be other factors in the Child's family circumstances that could be contributing to the Child's underperformance as envisaged in 7.44 of the Code. In fairness to the Local Authority, the report from the Social Worker has only recently come to light and the Local Authority Representative stated that she was "horrified" by the report. Under 7.6 of the Code "information gathered during an assessment may indicate ways in which the school can meet the child's needs". At the present time it was clear to the Panel that there is no clear plan to meet the Child's needs and there was no evidence to elicit whether the Child was underachieving or had special needs which needed to be addressed by a statement. The only way that this information would be available, so that the correct decisions could be made for the Child, would be for the Child to be assessed.

Order

17. We direct the LA to assess the special educational needs of the Child.

Dated January 2012

Chair