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## **DECISION**

**Date of Birth:** 1998  
**Appeal of:** The Parent  
**Type of Appeal:** Refusal to Assess  
**Against Decision of:** The Local Authority  
**Date of hearing:** 2011

**Persons Present:** The Parent  
Parent Representative  
Local Authority Representative  
Local Authority Special Educational Needs Co-ordinator  
Local Authority Specialist Teacher

### **Appeal**

1. The Parent appeals under section 329 of the Education Act 1996 against the refusal of the Local Authority (LA) to comply with their request to arrange an assessment for their Child.

### **Preliminary Issues**

2. The Parent applied to admit a record of an exchange of e-mails between them self and SENCO at School A. These e-mails are dated between the 17<sup>th</sup> February 2011 and the 1<sup>st</sup> April 2011. The LA did not object to the admission of the e-mails in evidence. However the tribunal did not allow the application as the criteria set out in regulation 33(3) were not met. The e-mails had been sent and received some time before the close of the case statement period and should have therefore been included in the case statement. The circumstances are not wholly exceptional and as both the Parent and SENCO were present at the hearing then there was no prejudice to the child if the e-mails were not admitted in evidence.
3. As the hearing progressed it transpired that the Parent was in possession of a speech and language therapy report dated the 6<sup>th</sup> September 2011 compiled by a Speech and Language Therapist. This report is referred to in the speech and language therapy report. The Parent was invited to apply to admit this document in evidence because of the reference made to it in this other report. The LA had not seen this report and was anxious to be able to do so. The document was admitted in evidence under regulation 33(3) as the circumstances were wholly exceptional and there could be prejudice to the interests of the child if the report was not admitted in evidence. However the copy in the Parent's possession was not a complete copy, with at least one page missing. Nevertheless the section of the report containing the author's

recommendation was available and it was thus appropriate for the evidence to be admitted.

### **Facts**

4. The Child was born May 1998 and is now thirteen years. The appellant is the Parent.
5. The Child received primary education at School B. This is a small primary school with a restricted number of pupils. The class sizes are no more than eleven pupils.
6. In September 2009 the Child moved to School A. The Child remained at School A until the 12<sup>th</sup> July 2011 when the Child was removed by the Parent. The Child did not return to the school in September 2011 and has not attended any school since then. A request has been made for home tuition. The LA has not provided home tuition because the request does not fulfil the LA's criteria for home tuition given that the child was removed by the Parent.
7. No replacement school has been identified for the Child although the Parent has an appointment to view School C in the near future.
8. Whilst at School A the Child received assistance at School Action Plus to support the Child's social, emotional and behavioural needs.
9. On the 17<sup>th</sup> May 2011 the Parent requested a statutory assessment of the Child's special educational needs. The LA informed the Parent on the 30<sup>th</sup> June 2011 that it would not be carrying out an assessment. The letter of notification states that the LA considers that the Child "was making good progress and that there were no reported learning difficulties".
10. On the 26<sup>th</sup> July 2011 the Parent lodged their appeal against the LA's refusal to undertake a statutory assessment.

### **Tribunal's Decision with Reasons**

11. We have carefully considered all the written evidence and submissions submitted 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.
12. In the Parent's appeal notice the Appellant lists a number of difficulties which the Parent believes that the Child experiences. It is argued that the Child is falling well behind peers educationally and that the Child struggles in a variety of areas in relation to educational ability. The appeal notice also states that there are behavioural difficulties, sensory issues, difficulty with motor skills and also difficulties with social communication and interaction. In support of the Parents appeal the Parent provides three reports, namely an Educational

Psychology report dated the 5<sup>th</sup> October 2011(Chartered Educational Psychologist), an Occupational Therapy report dated 16<sup>th</sup> September 2011 by (a Paediatric Occupational Therapist) and a Speech and Language Therapy report compiled (a Consultant Speech and Language Therapist) dated 24<sup>th</sup> September 2011. These reports were compiled when the Child was not attending school and each prescribes a raft of provision that is considered as being appropriate by each individual expert to meet the Child's special educational needs.

13. The Parent in their evidence highlighted the Child's behavioural difficulties, indicating in particular that the Child's mood has been up and down that the Child is vulnerable to the persuasion of others and was bullied at school. Without providing details, the Parent stated that an incident occurred in July which gave them no option other than to remove the Child from school. The Parent made it clear that the Child will not be returning to School A and that the Parent was searching for another suitable school. The Parent suggested that the Child will not be returning to school until a school is identified that is able to meet the Child's needs.
14. The Child was diagnosed with ADHD. The Child was prescribed Methylphenidate twice a day, but the tribunal was informed that the Child no longer takes their medication, and will not be re-prescribed until their weight increases.
15. There are references in the bundle to the Child having traits associated with autistic spectrum disorder. However no diagnosis has been made and a letter from a Consultant Child and Adolescent Psychiatrist dated 23<sup>rd</sup> November 2010 suggests "that there were no obvious symptoms of autistic spectrum disorder" during the assessment of the Child in November 2010. It is unclear whether or not there is an on-going multi-disciplinary assessment in relation to this issue, although the Parent reports that a referral has been made for such an assessment to be undertaken. There is no corroborative evidence to support this claim. It is noted however that two speech and language therapists recommend further assessment in this area.
16. In their evidence the Parent stressed that they were of the view that the Child is functioning at a younger developmental age than peers and is regressing academically. The Parent states that the Child has difficulty understanding information given to them and is unable to cope with work unless it is conveyed on a one-to-one basis.
17. A starting point for considering whether or not a local authority should undertake a statutory assessment is The Special Educational Needs Code of Practice for Wales. Paragraph 7.34 reads "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

LA to determine the child's special educational provision. LA's will need to examine a wide range of evidence. They should consider the school's assessment of the child's needs including the input of other professionals such as educational psychologists and specialist support teachers, and the action the school has taken to meet those needs".

18. The Code of Practice gives further assistance at paragraph 7.35 upon aspects that should be given particular attention, namely :
  - 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 have been involved with the child, as to the nature, extent, 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, style of the child's progress
  - Evidence that where some progress has been made it is only been as the result of much additional effort and instruction at a sustained level not usually commensurate with the provision through Action Plus
19. The tribunal was impressed with the evidence of the SENCo at School A. They clearly had a good knowledge of the pupil and spent a considerable amount of time identifying and addressing the Child's needs. The school identified that the Child required support at School Action Plus to address social emotional and behavioural needs. As a result the Child had a consistent handling plan, a pastoral support programme and access to withdrawal periods under the supervision of the SENCo. The Child has also had the support of a specialist teacher
20. The evidence from the school is that the Child was making good academic progress. The Child's year 8 report shows that the Child was generally achieving pleasing results. It was clear that the Child was having problems in two or three subjects although in those subjects they had the potential to do well with a little more effort and improved behaviour. The SENCO as an example highlighted that the Child could be disruptive during a music lesson and as such the Child would be allowed a withdrawal period with the SENCO to address behavioural issues. The tribunal was told that the Child required these withdrawal periods on about three occasions a fortnight on average.
21. It is a matter of concern to the tribunal that the Child's attendance at school up until July 2011 was only 75%. However the SENCO reported that from their discussions with the Child that the Child was happy at school and had a circle of friends.

22. The specialist teacher, also gave evidence that the Child perceived that they were doing well in school and talked very positively about their experiences at school.
23. There was however a significant deterioration in the Child's behaviour over the last few months with a two day and five day exclusion in April and a further three day exclusion in June.
24. The school had considered making a referral to an educational psychologist during the last academic year but in the event decided to concentrate on the behavioural aspects. No LA educational psychology input has been provided to date.
25. By reference to the matters set out at paragraph 7.35 of the Code of Practice quoted above, the tribunal finds that the school has responded appropriately to the requirements of the National Curriculum, and there is clear evidence of the action taken by the school to meet and overcome the Child's difficulties. The tribunal has also been provided with evidence of the rate and style of the child's progress. The evidence given of the Child's academic progress is completely different to the picture given by the Parent. It should be said that the Parent was not able to point to any specific evidence in the documentation as to how they believe the Child is regressing educationally. The Parent suggested by way of an example that the Child's reading has deteriorated to such an extent that the Child is virtually incapable of reading some documentation. These difficulties are not reflected in their school report.
26. However the tribunal is left with the impression that there are unexplored aspects of the Child's presentation and learning difficulties. The LA acknowledges the intention of obtaining an assessment by an educational psychologist. The LA's case statement states that it was the intention of the LA to obtain an educational psychology and speech and language assessment
27. The tribunal also notes the recommendation by two speech and language therapists that a further assessment is required by a specialist speech and language therapist in the area of differential diagnosis of autistic spectrum disorders.
28. The Child's behavioural difficulties are concerning and appear to be escalating. An extended period of non school attendance will not have assisted these difficulties and their reintegration into full time schooling may not be without its difficulties.
29. The Code of Practice refers to behaviour, emotional and social development at para 7.60 "Children and young people who demonstrate features of emotional and behavioural difficulties, who are withdrawn or isolated, disruptive and disturbing hyperactive and lack concentration; those with immature social skills; and those presenting challenging behaviours arising from other complex special needs may require help for some, or all, of the following

- Flexible teaching arrangements
- Help with development of social competence and emotional maturity
- Help in adjusting to school expectations and routines
- Help in acquiring the skills of positive interaction with peers and adults
- Specialised behavioural and cognitive approaches
- Re-channelling or re-focusing to diminish repetitive and self-injurious behaviours
- Provision of class and school systems which control or censure negative or difficult behaviours and encourage positive behaviour
- Provision of a safe and supportive environment”

Each case must be considered on an individual basis to assess whether these interventions can be provided through school action plus or whether a statutory assessment is required. The School in this case has implemented several of the interventions set out above but the overall impression is the Child’s behaviour at school has deteriorated thus meriting a through assessment of the possible causes and the provision required to address the issues identified.

30. An educational psychology assessment and a speech and language therapy assessment could of course be undertaken without a formal statutory assessment. However, given the present circumstances, where the Child is not attending school and with no unequivocal commitment being forthcoming from the Parent to cooperate with the assessment process, the tribunal considers that these assessments should be undertaken as part of a statutory assessment.
31. It is a matter of concern that the Child is not presently attending school. It is imperative that the Child returns to school at the earliest opportunity and it is not appropriate for them return to school to be delayed until the completion of the statutory assessment. Indeed, in order to achieve a meaningful assessment the Child must attend school regularly.
32. In addition the full cooperation of the Parent is necessary in order to allow the relevant experts to have access to the Child to undertake their assessments. It is also important that this statutory assessment is carried out in a timely manner and that each part of the process is conducted with all reasonable speed.

**ORDER : Appeal allowed**

The Local Authority shall arrange an assessment of the Child.

Dated November 2011

Chair