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## **DECISION**

<b>Date of Birth:</b>	1999	
<b>Appeal of:</b>	The Parent	
<b>Type of Appeal:</b>	Refusal to issue a Statement of SEN	
<b>Against Decision of:</b>	Local Authority	
<b>Persons Present:</b>	The Parent	<i>Parent</i>
	The Child	<i>Child</i>
	Parent Representative	<i>Solicitor</i>
	Parent Observer	<i>Grandparent</i>
	LA Representative	<i>Solicitor</i>
	LA Witness	<i>Head of ALN</i>
	LA Witness	<i>Educational Psychologist</i>

### **Appeal**

1. The Parent appeals under Section 325 of the Education Act 1996 against the decision of the Local Authority not to issue a Statement of Special Educational Needs in respect of their Child. The letter setting out the decision of the Local Authority is dated May 2012.
2. 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 the evidence that we have read and heard.
3. The Child was born in March 1999, and is presently therefore aged 14 years. The Child lives with their Parent. The Child attends School A. The Child has complex learning needs and a diagnosis of dyslexia, autistic spectrum disorder and ADHD. The Child also has mild learning difficulties, particularly in areas involving verbal communication. The Child will not accept working on a one to one basis with adults. The Child attends school willingly, but on occasions finds the noise levels in class distressing. The Child does not like attention being drawn to them. The Child has now been provided with a red card to enable them to leave a stressful situation if the Child feels the need to do so; and the Child does use this. The Child is generally well-behaved in school, but the stress the Child experiences can come out in a "meltdown" when the Child returns home.
4. We began to hear this case in January 2013 but it had to be adjourned to enable the Local Authority to complete its assessment process in accordance with the Code of Practice.

5. We recommenced the hearing in March 2013, when we heard evidence from the Local Authority that the Child would be able to attend a Learning Resource communication and social skills class, led by a Speech and Language Therapist, each Friday, for 1 ½ hours, over the whole of next term and for the following 2 years, equating to some 135 hours of provision, and that this would be confirmed by the Local Authority's Panel.
6. However, in March 2013 a letter was received from the Local Authority. It confirmed a Panel decision that the Child would be provided with a place in the Learning Resource communication class, but also stated:

*"This placement is offered for a fixed term and will be reviewed on a regular basis in line with the information from the Speech and Language service."*

7. The letter did not therefore confirm what we were told in evidence at the hearing about the longevity or security of this placement. It did not specify the period over which the Child would be able to attend the class. It did not confirm the frequency of the reviews, the criteria that would be applied at such reviews, or whether the Local Authority makes the decision about the continuation of the placement.
8. We therefore issued directions at the end of March 2013, seeking clarification of the Local Authority's position and requesting further written submissions from both parties, in order to avoid having to have a further hearing with all parties in attendance.
9. A further letter dated April 2013, was received from the Local Authority, which provided a response to the directions, but which was still not as detailed as we would have hoped. It did contain reassurance that the Child may access the Friday group for the remainder of the Child's time at School A, and that the provision would only cease at the, *"joint request of the school and Parent. This means that Parents would be centrally involved and willing partners to the cessation of support if this became appropriate."*

We take this to mean that this provision would only be withdrawn with the express consent of the Parent.

10. Written submissions were also received on behalf of the Parent. The principal points made, relate to the lack of a guarantee in the absence of a Statement. However, with respect, this is not the right question in this case. The question is whether it is "necessary" for there to be a Statement, as set out below. The Local Authority has confirmed the period over which the provision will be available, if not the dates, and has dealt with the length of the sessions and frequency of them. The criteria provided by the Local Authority within the letter dated April 2013, suggest the Speech and Language Therapist will not be present full-time at the sessions. However, we accept the evidence we heard that the Speech and Language Therapist will in fact be present during the whole of the group sessions. Indeed, it was the Speech and Language Therapist that was in attendance at the hearing and gave this evidence of whom will be in attendance at the sessions.

11. In arriving at our decision we have also taken into account the case of NC and DH v Leicestershire County Council (SEN) UKUT 85 (ACC). That case involved the refusal by a Local Authority to issue a Statement and considered the test in section 324 of "necessity", and the meaning of "resources" in the English Code of Practice. (The Welsh Code has similar wording.) In relation to the paragraph in the Code it stated:

*"Paragraph 8.2 addressed situations where there had been a finding that the special educational provision could not reasonably be provided within the resources normally available to mainstream schools. If it could reasonably be provided within the resources normally available, then it would not be necessary to require a statement. The resources "normally available" would obviously differ from case to case and from LA to LA. It was perfectly proper for a LA (and on appeal, a Tribunal) to take account of money and people being provided by the utilisation of devolved budgets, and in consequence to arrive at a conclusion that a statement was not necessary."*

12. The Upper Tribunal concluded that these words in paragraph 8.2 were directly relevant. It then set out two questions as follows:

*"The LA (and the Tribunal on appeal) had been required to address two questions in determining whether it was necessary under section 324 to issue a statement. The first question was whether the special educational provision identified as necessary for the Child in the assessment carried out under section 323 was in fact available within the resources normally available to a mainstream school. The second question was, if so, could the school reasonably be expected to make such provision within its resources."*

13. In this appeal we therefore have to consider these two questions. We have to determine whether it is necessary in the Child's case for a Statement to be issued in order for the Child's needs to be met.

14. We have also borne in mind paragraph 8:14 of the Code of Practice, which states:

*"The decision as to whether to make a statement should be determined by the Child's identifiable special educational needs in the context of arrangements for funding schools in the area."*

15. All parties agreed one-to-one provision was not a feasible option in the Child's case, from whichever agency it might be provided.

16. We heard evidence from the Local Authority that a Statement in the Child's case would not result in the Child receiving any additional provision (save as was ordered by the Tribunal). This is because the education budget in this Local Authority area has been devolved down to schools.

17. School A has specific funding as an area resource. We note that it is also open to children from other schools. It has additional funding for Additional

Learning Needs, and also has a Learning Resource Base. It is under the latter umbrella that the Child is able to attend the Speech and Language Therapy group on Friday afternoons, as set out below. During the remainder of the week the Child is in a small class, currently 9 in number, but this class is planned to reduce to 6 or 7 pupils by the Summer. Whilst School A is a mainstream school, therefore, it has additional funding to meet the needs of children with special needs.

18. We were impressed with the evidence of the SENCO at the Child's school. They told us about the school's commitment to the Child and 2 other pupils who need additional support. Whilst we accept that without a Statement there will be no legal guarantees that the provision will continue, we accept the evidence we heard from the Local Authority that a Statement would not result in any additional provision being made available to the Child, and in particular, we accept the evidence given to this end. That acceptance extends to the Local Authority evidence that the current level of provision would be maintained for the foreseeable future. In particular, we were pleased to hear the evidence that the Child could attend the speech, language and communication group (which will also incorporate social skills). This group is available each Friday for one and a half hours. A Speech and Language Therapist would be present throughout in order to address the Child's speech, language and social skills needs. The SENCo also gave the undertaking that the information collected about the Child during the sessions, and the information which has become available in the Speech and Language Therapy reports, would be incorporated onto the Child's profile on the School Information Management System (S I M S) so that it could be accessed by all staff. We were also pleased to note the monitoring that is to be carried out by the SENCo.
19. We have noted the Parents concerns about the Child's progress, but find, that with the exception of spelling, the Child's attainments in reading and mathematics are broadly commensurate with the Child's measured cognitive ability. We also note that over time there is clear evidence of progress, particularly in reading, and that the Child is progressing towards functional literacy.
20. We note that the recommendation in the report by a Speech and Language Therapist is for a program of Speech and Language Therapy overseen by a Speech and Language Therapist, which would be provided by 20 hours input from the Speech and Language Therapist. We accept the evidence that we have heard from the Local Authority those 10 hours has already been used to support the Child's needs during this academic year. The provision that will now be in place, with a speech and language therapist present during the Friday group sessions and involved with the Child's needs, together with "Talk Talk" sessions, will result in the actual provision significantly exceeding the provision suggested.
21. We have therefore concluded that the Child's needs can be met from within the resources available at the Child's school, and that therefore it is not "necessary" for there to be a Statement in the Child's case.

**Order**

The Parents appeal against the decision by the Local Authority not to issue a Statement of Special Educational Needs in respect of their Child is dismissed.

**Dated May 2013**