



DECISION

Child's Name: The Child
Date of Birth: 2017
Appeal of: The Parent
Against: The Local Authority

Persons present:

The Parent *Appellant*
Parental support organisation *Helper*

For the local authority:
LA representative *Representative*
LA Educational Psychologist *Witness*
LA Advisory Teacher *Witness*
LA ALNCo, Primary School *Witness*
LA Teacher, Primary School *Witness*
LA TA, Primary School *Witness*

Introduction

1. The Child is aged 6. They live with their parents and their four siblings in the Local Authority area. They attend a Primary School. This appeal is against the decision by the local authority that the Child does not have additional learning needs and the refusal of the local authority to prepare and maintain an IDP. Whilst the papers set out a picture of the dispute in this case it was only as we began to hear the evidence that the full extent of the gulf between the Parent and school emerged. There is nothing exceptional in a difference of opinion however in this case there were repeated and forceful allegations of dishonesty made against staff at the school. We take such matters extremely seriously and we therefore will consider them in some detail.

The evidence

2. The Parent described the Child as a vibrant and vocal child, everything you would expect of an active 6 year old who was funny, creative, and loves days out, however they went on to describe the Child as unable to learn because of the extent of the Child's anxiety in school. The Parent told us that they feel

strongly that the Child is not meeting their potential in school and that they need more intensive support. They said that they have been advised by the ASD Outreach Team that the Child's anxiety is "*so high that they will never learn*". They felt that the Child's academic process should be put on hold until the anxiety is sorted out. They alleged that the Child is overlooked in school and that there are staff, not the Child's class teacher or TA, who aren't seeing more, or do not want to see more of the Child's difficulties and added that the class teacher and the TA do what they're told to do. This was something to which we returned on the second day of the hearing.

3. There was much focus on the Parent's perception of the Child's presentation at the school gate at the start of the day. The Parent told us that the Child is not able to identify when they are unwell and that the Child has to be shown the communication cards which the Parent uses when they take them to school. They have eight of these, and on each of them is written a word, for example sick, hungry, tired etc. We pause to note that only one of those eight words, happy, has any positive connotations. The Parent told us that the Child uses those cards every day to try to get the Child excited about school. The Parent was firm in their view that the Child should have 1:1 support and maybe should be taken out of class for additional interventions, despite telling us that one of the things the Child dislikes particularly is standing out from the crowd. The Parent was asked whether the fact that the communication cards are not used at all during the school day raised any concerns on their part about using them, but they told us that it didn't.
4. The Parent was then referred to the School Report for year commencing September 2022 and was asked what they thought of it. They told us it sounds lovely but it might be exaggerated. They went on to say some specific entries were not true. On the second day of the hearing they went considerably further, suggesting it was a fabrication. The Parent then went on to say that The LA ALNCo, who was responsible for drafting that document, did not write down what they were told by the class teacher but wrote something different. They made general but serious criticisms of The LA ALNCo and told us that the description of the Child walking into school was not true and then asserted that the Child is in a state of distress as they enter the school, because of their unhappiness.
5. After a break the Parent suggested that the LA TA should be present to give evidence. The LA Representative indicated that the allegations that had been made against the LA ALNCo were serious and although made without any evidence, would be likely to trigger an internal investigation.
6. We then heard from the LA Educational Psychologist and the LA Advisory Teacher. Both of those witnesses were clear that the Child's needs can be met within universal provision, and they did not identify any unmet learning needs. In response to the Parent, the LA Educational Psychologist expressly advised that the Child is not falling behind their peers. The LA Advisory Teacher described the Child as a child who worked well during their observation, was able to work independently and posed their own questions to the teacher. The Child also expressed a desire to take part in role play. The LA Advisory

Teacher agreed with the LA Educational Psychologist that the Child is not behind their peers. They had no concern about the Child, either working within the whole class, or independently, or indeed working within a group of their peers, and advised that the Child can be supported within universal provision.

7. When the LA ALNCo gave evidence, they confirmed the description of the Child within the papers provided by the school, however more than once the Parent alleged that they were lying. The LA ALNCo, throughout their evidence, maintained that they were telling the truth. The Parent alleged that everything the LA ALNCo had written as additional comments on the ISCAN questionnaire (p23) was untrue. Asked about where the Child sits within the scale of provision the LA ALNCo advised that they are in universal. They told us that the Child is not behind their peers and that the school uses cohort trackers to review the Child's progress three times per year. As the LA ALNCo was telling us about the timetable, The Parent told us that "*all of the witnesses are in cahoots with each other and the narrative is changed by the school on the day*". They pointed out that The LA ALNCo had reported that the Child ate their peas with their Christmas dinner. Despite the LA ALNCo telling us that they stood next to the Child and watched them eat their dinner, the Parent was adamant that they were lying, because the Child does not eat peas at home. That brought us to the end of the evidence on the first day and after hearing submissions we decided that we wanted to hear from the LA TA and the LA Teacher, the Child's class teacher for the year commencing September 2022. We also indicated to the LA representative that we were so concerned about the allegations levelled at staff that we required sworn statements. We adjourned to continue on another day.
8. When we reconvened, we had the statements from the LA Teacher and the LA TA but we had also been sent a number of documents by the Parent which they asked to be included as late evidence. Six of these were short emails from friends and acquaintances who told them that they had seen the Child at the school gate and, in brief, described a child who can be reluctant to leave their Parent or even be upset. After submissions, we refused to admit these documents as they could easily have been made available prior to the beginning of day one of the hearing. Further it was not in issue that the Child does not easily leave their parent in the mornings and is occasionally upset.
9. We also had a sequence of emails from between the Parent and the school and a response in writing from the Parent to the evidence of the LA Teacher and the LA TA. We were content that those documents should be admitted as they assisted us determining the case.
10. Although at the end of day one of this hearing we all understood that nothing further was required of the witnesses, the Parent had indicated in the adjournment period that, having taken advice from a parental support organisation, they had further matters to raise with the LA ALNCo. The Parent had been unrepresented and unsupported on day one and a direction was issued that the LA ALNCo was also to attend on the second day. It transpired that the only matter the Parent wanted to raise with the LA ALNCo was in respect of an entry on p136, which the LA ALNCo explained was not an

opinion about the Child but was simply a general definition of the threshold for additional provision. The LA ALNCo also confirmed that all of the entries they had made in the Child's records came from input from the class teacher, the teaching assistant and the assistant ALNCo, on whom they are reliant. At this point the LA ALNCo was released.

11. The Parent was reminded of the significance of the statements from the LA TA and the LA Teacher, and the importance of the statements of truth which appear at the end of both, however they alleged that what was said was not true. It was impressed upon them that they had to be clear in their challenge to the witnesses in respect of those matters which they regarded as untrue.
12. The LA TA described meeting the Child as is set out in their statement. They told us that every day the Parent flips through each of the communication cards but usually focuses on the 'scared' or 'sick' card which then triggers a conversation with the Child. The Parent told us that the Child cannot distinguish whether they feel poorly or whether they feel worried. When it was suggested to the Parent that it's pointless asking the Child how they feel if they're unable to distinguish their feelings, The Parent simply said they had to ask them because they struggle with their emotions and *"on 100% of the time they normally burst into tears"*. The LA TA told us that the Child is not tearful every day, although they do need support and on some occasions is tearful. Again the Parent alleged that the LA TA's evidence was not true and told us that *"The Child is scared of school they absolutely hate it, and every day is the same"*.
13. The Parent was referred to the LA TA's statement where they say the Child does not present as upset or anxious during the transition into the building. Again the Parent told us that wasn't true, because the Child tells them later. Asked why the LA TA would lie to us when they are a person who the Parent holds in high regard, who owes a professional duty of care to the Child, and who owes a duty of truthfulness to us as a tribunal and indeed to the Parent, their answer was that rather than tell the truth they were simply saying what the LA ALNCo tells them. At this point the LA Representative informed us that in view of the serious allegations that had been made during day one of the hearing, he took the statements of the LA TA and the LA Teacher the next day. They told the LA ALNCo to stay off school for that day so that there was no possibility of the additional witnesses discussing what had happened during the hearing. Further, neither of them were aware of the contents of the hearing bundle.
14. The Parent was asked whether what the LA Representative said reassured them that the witnesses were truthful, but they told us that it did not make any difference to their view.
15. The LA TA told us that the Child is just an ordinary child joining in with the rest of their class, which includes dressing up and playing. The Parent sought to explain that away, telling us that the Child tells them that they simply pretend to join in with the classroom activities because they don't want to look different

and is too scared of making a fool of themselves. The LA TA at this point said that was not correct and that the Child is just an ordinary child joining in.

16. The LA Teacher reinforced the description of the Child set out in their statement. We asked them during a break to speak with the Child's new teacher for this school year and to give us an update. On reconvening, they told us that since the start of term there had been no tears save for one day, and that the Child's presentation was much as it was last year with them and the LA TA. The Child still has no hesitation in joining in lessons, they ask for the toilet, they join in with their peers, their behaviour and presentation is fine at assembly, and they are able to get their coat and bag. Their new teacher and TA have no concerns about accessing the learning process. Further they confirmed that the Child does not use the communication cards.
17. At this point the Parent said to us that the Child gives them a different story and that they believe the Child. They took issue with the LA Teacher's advice that the Child is accessing learning and suggested that they were not meeting their potential at all. They refused to accept that the Child is more than capable of explaining their needs and is more than willing to engage in the learning process. The Parent suggested that the LA Teacher was completely wrong, and that the Child masks their real difficulties. The LA Teacher did not agree. They advised that they had a good bond with the Child and that they are no different to any other child in their class.
18. The Parent was asked why they had never taken up the opportunity of the weekly and open-ended invitation to go into school to discuss the Child's work since about the third week of term in October 2022. The Parent suggested that they stopped going around about Christmas but still did not take issue with the broad thrust of the LA Teacher's point that there was an open invitation for weekly discussions in school about the Child's progress, which hadn't been taken up. The Parent was unable to explain with any degree of clarity why the Child stopped, but rather, pointed a finger of blame at the school telling us "*it fizzled out on their side*".
19. The LA Teacher drew their evidence to a close, telling us that the Child speaks spontaneously in class and indeed speaks about life outside school. They respond better in a small group setting but they are no different in that to many children. They are meeting their potential, they are improving with the benchmark testing and is on target to be ready for key stage 2 when they enter the junior phase of their education next year.

The test

20. The primary question in this case is whether there is a gap in the Child's learning or a barrier to learning of which requires something more than universal provision. The test we must apply is set out in s2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (hereafter the Act) states as follows:

Additional learning needs

- (1) A person has additional learning needs if he or she has a learning difficulty or disability whether the learning difficulty or disability arises from a medical condition or otherwise which calls for additional learning provision.*
- (2) A child of compulsory school age or person over that age has a learning difficulty or disability if he or she*
 - (a) Has a significantly greater difficulty in learning than the majority of others of the same age*

Our conclusions

21. We are satisfied that there is no barrier to learning which requires ALP. On the contrary, we accept everything we were told by the school and the expert witnesses, namely that the Child is a child who is thriving in school, who is doing well in their assessed work and who is on target for key stage 2. There was a compelling consistency to the evidence presented by the local authority and there was not a shred of evidence which could suggest that one or more of them was dishonest in any way or that their advice was deficient or unreliable. We found the evidence of the LA TA and the LA Teacher to be particularly helpful as they provided a clear picture of the change in the Child's presentation once they enter the school building. They do find it difficult to leave their Parent but with encouragement from the LA TA and their TA colleague who has supported the Child since the start of this term, they settle very quickly into the life of the classroom. The Parent was adamant that their description of the Child on the way to school and at the school gate is an accurate reflection of their presentation during the school day and they were unshakeable in their refusal to accept what the witnesses said about the Child's achievements and engagement. Despite those intense beliefs, the Parent has not once since October last year taken advantage of the standing weekly invitation to go to school to discuss the Child with the LA Teacher. There is nothing they can point to from within the papers or their own direct knowledge of the Child in school which could support what they say, and we reject their assertions in their entirety.
22. We are most concerned for the future of the Child's education. Whilst we are clear in our conclusion that the Child is happy in school, their long-term success is greatly dependent upon the relationship between their parent and the staff, and the encouragement they get at home. Home and school working together is more, much more, than a prompt reply to emails, brief exchanges at the school gate, or the like. It requires a genuine collaboration between parents and staff, and that is a two-way street built on mutual respect and trust. The Parent's rigidity of thought creates a weakness in the foundations of the Child's education, which will, if it persists, generate an increasing risk of failure of engagement, achievement and self-esteem. The warning sign for such failure can be seen in the Parent's response to the outcome of the ALN assessment, where the Parent says:

“The Child is at risk due to communication difficulties and not recognising that the Child is ill ... “. p7

We cannot examine the Child’s circumstances at home, we can only address their presentation and needs in school, where, we are satisfied, they are not at risk, does not have communication difficulties and is not ill.

23. More than once the Parent complained to us that their relationship with the school was poor because of the intransigence of staff, and that they have had to fight for everything for the Child, but it is plain to us that the school have done all they possibly can to support the Child and indeed to try to involve the Parent closely in the Child’s education. Their willingness to do so has not, as the Parent alleges, fizzled out. They have been, and remain committed to the Child and to the Parent.
24. The Parent was unable even to express any pride in the Child’s end of year report, telling us that they would have been proud of it if it were true. That unwarranted degree of suspicion was threaded through both their questions to witnesses and their answers to us. For reasons which were impossible to understand, the Parent appears to see the LA ALNCo as the driving force behind the dishonesty they allege. We have made plain above what we conclude generally about the reliability of the school’s witnesses, but we wish to recognise at this point the professionalism and commitment of the school staff and in particular, the LA ALNCo. We note the extent of the anxiety that they were caused by serious allegations and they deserve to know, as do their colleagues, that no criticism whatsoever can be laid at the Parents door or theirs. The allegations of dishonesty made by the Parent were wholly without any evidential basis and we reject every one of them without hesitation. All of the witnesses displayed the utmost courtesy and professionalism in trying circumstances.
25. The Child does not have a significantly greater difficulty in learning than the majority of others of the same age. They do not have additional learning needs and the local authority did not err in refusing to prepare and maintain an IDP. Appeal dismissed.

Dated October 2023