

**DECISION**

**Date of Birth:** 2013  
**Appeal of:** The Parent  
**Against Decision of:** The Local Authority  
**Date of Hearing:** 2023

**Persons Present:**

The Parent	<i>Parent</i>
The Parent's friend in support	<i>Parental Support</i>
Counsel for the LA	<i>LA Representative</i>
LA Principal Educational Psychologist	<i>Representative</i>
Head of the Pupil Referral Unit and Inclusion Officer Witness	<i>Witness</i>
LA Inclusion Officer	<i>Witness</i>
LA Observer	<i>Observer</i>

**Appeal**

1. The Parent is exercising their right under s.70(2)(e), (f) and (h) respectively, of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("ALNA 2018") to appeal the following issues:
  - The additional learning provision (ALP) in an IDP, or the fact that the ALP required is not in an IDP.
  - The school named in an IDP for admission, or if no school is named in an IDP for admission.
  - The decision by the LA not to change an IDP when a child, child's parent or young person has asked the LA to reconsider an IDP maintained by a maintained school.
2. Their appeal is made in relation to Sections 2A, 2B and 2D of the Individual Development Plan dated May 2023.
3. References to the "2021 Regulations" in this Decision are to The Education Tribunal for Wales Regulations 2021.

## Mode of hearing

The hearing took place by video connection which was stable throughout the proceedings.

## Preliminary Issues

### The other parent

4. The other parent has had notice of these proceedings. Following a Case Management Hearing in October 2023, the other parent was given a deadline to notify the Tribunal whether they wished to play a part in the proceedings. The Tribunal has not received such a notification from the other parent. Accordingly, the Tribunal has taken into account the other parent's views as they are expressed in the evidence of others.

### Reasonable Adjustments

5. The Parent informed the Tribunal that they had made childcare arrangements for the day until 3pm. The Tribunal allowed a short adjournment so that further arrangements could be made during the course of the afternoon with staff at the Pupil Referral Unit. The Child was able to stay at the Pupil Referral Unit for an additional period of time.
6. The Tribunal would like to thank the Head of the Pupil Referral Unit and staff for their kind and thoughtful support, which enabled the hearing to be concluded on the day.

### Witnesses

7. The LA filed a Request for change in November 2023 requesting permission for an additional witness as an exception to the provision at regulation 43(2) of the 2021 Regulations, which (broadly) limits the number of witnesses to 2 witnesses per party. The Tribunal gave permission for the Head of the Pupil Referral Unit and Inclusion Officer to give evidence about provision/placement, because it considered their evidence to likely to be of relevance to the issues before the Tribunal. The Tribunal relied on its powers under regulation 43(7) of the 2021 Regulations to allow them to be an additional witness.

### Attendance of Observer and Supporting Friend

8. The Parent did not object to a member of staff from the legal department being an observer. The Tribunal in consideration of this fact and the provisions at regulation 50(1)(a) of the 2021 Regulations, allowed the member of staff to attend as an observer and the Parent's friend to attend in support of the Parent

on the basis that they maintained the confidentiality of the proceedings and the requirement that they did not seek to play an active part in the hearing.

#### Late Documents

9. The LA applied to file 3 documents on the morning of the hearing. A short adjournment was granted to enable the Parent and the Tribunal to consider the documents. The documents are,
  - a) Report of an incident at the Primary School with the Child in November 2023.
  - b) A report of the Child's views as expressed during a scheduled Think Room Session at the Pupil Referral Unit in November 2023
  - c) An updated version of the Working Document, containing minor updates.
10. The Parent consented to the admission of documents (a) and (b). The Tribunal admitted the written evidence under the provisions of regulation 47(1)(a) of the 2021 Regulations.
11. The Tribunal took into account the Parent was representing themselves and had found it difficult to consider the Working Document of November and then to meet with the LA to discuss it. The Tribunal refused to admit (c), the amended Working Document, on the basis that it would be contrary to the overriding objective in regulation 2 and 2(c) of the 2021 Regulations, to conduct the proceedings fairly and justly and to ensure as far as possible, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings.
12. There was limited time to consider the changes to the Working Document and in any event, resolution of the issues before the Tribunal would require the production of a further Working Document. Therefore, the Tribunal reasoned, there was no prejudice to the LA in the document not being admitted and in accordance with regulation 2(2)(c) of the 2021 Regulations, the Parent would be better able to participate in the proceedings.

#### Application for an adjournment

13. In November 2023, the LA filed a request for Change and made an application for adjournment. The Tribunal refused the request, taking into account a request to delay the final hearing had been made and refused in September 2023, on the basis that it would not be consistent with the overriding objective at regulation 2(2)(e) to "avoid delay, so far as that is compatible with proper consideration of the issues."

## Background

### Procedural background

14. The Parent's appeal was issued in July 2023. In their appeal, the Parent expressed a wish for the Child to attend the Specialist School, a specialist school for autism in the LA area. The other parent was opposed to this proposal; they did not consider the Child's needs to be at a level of difficulty to require a specialist school.
15. In August 2023, the LA issued a Request for Change, requesting that the other parent be joined as a party. The parents had divergent views on the suitability of the Child's current provision. Additionally, the Parent had agreed to mediation with the LA, facilitated by Snap Cymru. The other parent expressed a wish to be part of the mediation.
16. In September 2023 directions were made to adjust the evidence timetable and to refuse an application to move the final hearing date from November 2023.
17. In September the President refused the LA's application to make the other parent a party. The President reasoned that there was no direct or written evidence that the other parent was in dispute with the LA about the draft IDP, nor that they wished to be a party.
18. The Parent wrote to the Tribunal in October 2023. They asked that the LA be barred from the Tribunal, due to the deficits in the evidence bundle, inaccuracies in the Child's history and because documents relating to another child, were sent to them in error.
19. A Case Management Hearing took place in October 2023. Further evidence directions were made and, in the event, due to Tribunal availability the final hearing date was rescheduled to November 2023.
20. In November 2023, the LA filed a Request for Change. The LA considered the Parent's case statement of [page 3 of the LA's addendum case statement refers] appeared to agree with the LA that the High School as an appropriate placement for the Child from Y7, however, the Parent wanted the placement to be conditional on a limited number of exclusions. They did not specify what should happen in the event that the fixed number of exclusions was exceeded. The LA asked the Tribunal to seek clarification from the Parent as to their proposals at a Case Management Hearing.
21. In November 2023, the Deputy President refused the application by the LA for a Case Management Hearing to enable the Parent to clarify their position in relation to the appropriateness of the High School for the Child. The Deputy President refused the application on the basis that the issue as to suitability of the High School is a matter for the final hearing.

22. A Working Document dated November 2023 has been received setting out the parties' views.

Issues before the Tribunal, no longer in dispute

23. The parties are not in dispute that the Child has needs linked to ASD and to BESD and that these needs require provision.
24. A substantial number of the issues in the Working Document that were in dispute when the appeal was made, are no longer in dispute, including that the Child is to have 1 to 1 TA support. Following the Directions Hearing in October the Parent was ordered to consider alternative schools and provide an addendum case statement and a version of the IDP with their wording by October 2023.
25. During the hearing, the Parent said it was "too late" to move the Child to another school for the remainder of Y6. It was for this reason that, they had not submitted evidence concerning an alternative placement for the remainder of Y6, why they no longer wished to pursue the issue of a placement at another primary school in the area and why they had not called any potential school witnesses.
26. The Parent did visit the High School and the Primary School. In part, due to the small amount of outdoor space at the Specialist School, the Parent no longer wishes to pursue this option.
27. The parties are agreed that the Child will remain at the Primary School and the Pupil Referral Unit for the remainder of Y6. Therefore, it is not necessary for the Tribunal to determine the appeal made under s.70(2)(f) ALNA 2018, in relation to placement.
28. The Parent has expressed their preference for the High School. The other parent informed the LA Principal Educational Psychologist of their preference for the High School. The LA say in their addendum statement of November 2023 at §11, it is their position that the Child's needs can be met at the High School. The LA acknowledged at the Hearing that as they maintain an IDP for the Child, they are able to direct the High School to take the Child in September 2024, in the event that they are not allocated a place in March 2024. Therefore, the issue of the outcome of the schools' allocation process, does not have to determine the Child's high school placement, nor determine the timetable and focus of transition planning in this case. The Tribunal notes that both parents have now expressed a preference for the High School and trusts that the LA will begin the extended transition process to the High School in accordance with their assurances to the Tribunal and with the IDP.

## Position of the parties

29. The Parent is in firm disagreement with the LA as to whether the Child's primary needs are as a result of their ASD (The Parent's position) or, whether they are a result of the Child's BESD needs, in particular, insecure attachment (the LA's position).
30. The Parent's focus for the appeal is
  - Ensuring that the Child's needs are identified and provision for those needs is in place at the Primary School and the Pupil Referral Unit.
  - To identify their need for certainty and support with managing change and for provision linked to transition planning for high school.
31. The LA did not object to the narrower focus of the Appeal. The parties are agreed that a longer period of transition planning is needed to prepare the Child for transition to high school.
32. In the statement dated November, the LA states it considers the current arrangement for the Child, the Primary School and the Pupil Referral Unit to be suitable [§3]. The LA considers the High School to be a suitable High School for the Child from Y7.
33. The Parent has sought assurance from the LA and from this Tribunal that if the Child is to go to the High School in September 2024, that they have security as to the Child's further placement in the event of permanent exclusion from the High School. The LA object, they say that the circumstances and the Child's needs at that time should not be presumed on the basis of the current evidence. The LA relies on the evidence of the Head at the Pupil Referral Unit about the progress the Child is making and the evidence of the Headteacher at the High School, about the successful transition from the Pupil Referral Unit of children with a profile similar to the Child's to the High School and other mainstream high schools.
34. The parties agreed the remaining issues in the dispute could be dealt with by focusing on the areas in dispute in the Working Document of November 2023.

## The Child's background and views

35. The Child likes Lego and Minecraft. they and their family enjoy the Harry Potter stories and have pets named after some of the characters. The Child has strengths in maths and PE and can be very competitive. [p1365 LA Principal Educational Psychologist]. they enjoy being outdoors, karate and swimming [LA Principal Educational Psychologist p. 1367]. The Child wants to be a builder or an engineer.

36. The Child lives at home with the parent, their sibling and their baby half-sibling. Their parents divorced 5 years ago, both of them are in new relationships.
37. The Child had little contact with their other parent in the latter part of 2022. In January 2023 the Parent's partner was due to move into the family home and the Child is reported to get on well with them.
38. In February 2023, after an incident at their parent's home, the LA states the Child went to live with their other parent, until September 2023. During this time, they had limited contact with their parent. Since September 2023, the Child has spent one week living with their parent and one week with their other parent, their other parent lives nearby. The dates the Child lived primarily with one parent, and the extent of contact with the other at the time, remain a source of dispute between the parties.
39. The Child initially attended an Infant School. In February 2020, when the Child was 6 years old and in Year 2, they were referred to the LA Schools' Outreach Service ("LASOS") because of behavioural issues such as refusing to do tasks, ripping up their work and aggression towards other pupils and the teachers. An Individual Behaviour Plan was drawn up in response. They accessed Behavioural and Emotional Support through the KS1 provision. The onset of the pandemic and lockdowns interrupted access to this provision for the Child.
40. The Child was referred to CAMHS by their paediatrician in May 2020 due to concerns about their limited attention and focus and increasingly impulsive and challenging behaviours.
41. A neuro developmental assessment was undertaken by a Neurodevelopmental Advanced Nurse. In their Report of January 2023, they conclude that the Child does meet the criteria for a diagnosis of ASD. They do not meet the criteria for a diagnosis of ADHD. They present with a Demand Avoidant Profile; they are happier when they are confident about any expectations about learning or behaviours. The Child has a rigid style of thinking which can be perceived as stubbornness.
42. In September 2020, the Child transferred to another school. They continued to be supported by LASOS. They were offered a further 12 week intervention for emotional and behavioural support. The Parent declined the support as they felt it would interfere with the Child settling into a new school. The Child's struggles with emotional regulation and low self-esteem continued, however, they went on to have a "relatively settled" Y3 [p.1365].
43. The Child had had a number of fixed term exclusions from the other school, following a significant outburst there, permanent exclusion proceedings were commenced. In November 2022 the Child moved from the other school to the Primary School.
44. In November 2022, the Child's parents asked the Primary School to start the ALN process.

45. The Child attends the Primary School and a Key Stage 2 Pupil Referral Unit in the afternoons Monday to Thursday during term time. They attend the Primary School every school morning and all day on Fridays. Since October 2023, they have had a Teaching Assistant allocated to them. They continue to experience fixed term exclusions.
46. The Child told The LA Principal Educational Psychologist that there was “nothing good about here [The Pupil Referral Unit]” [p.1371/G68- 69]. When discussed further, the Child explained that they found it embarrassing to get into and out of a taxi to the Pupil Referral Unit in front of their friends. They said, “All I want to know is what school I need to go to” and “I just want to be like everyone else and have a normal life.” They said they would like to have access to sport at school and would like smaller class sizes. They told The LA Principal Educational Psychologist that they knew they were autistic but that they did not really know what that was.
47. The Child was asked about their wishes for school in Y7 by the LA Principal Educational Psychologist [p.1371/G69] in September 2023. They said that their other parent wanted them to go to the High School and their parent wanted them to go to the Specialist School. They did not know which one to choose. The LA Principal Educational Psychologist reflected “It was evident to me that the Child thought that “choosing” meant “choosing” one parent over the other. The Child asked that someone come and tell them at school once a decision had been made about their future school.

#### Evidence

48. The Tribunal has considered the evidence in the 1492 page electronic bundle. It has also considered the LA’s addendum case IDP with their wording which can be used as a WD by November 2023, the late evidence detailed at §9 and the oral evidence given at the Hearing.

#### The Tribunal’s Observations and Recommendations

49. The Tribunal notes in the LA Principal Educational Psychologist’s Report, they recommend that the teaching staff continue to refer to the Child’s neuro developmental profile which describes their neuro developmental needs and strategies to address these [p.1373/G70]. The Tribunal suggests the LA consider incorporation of these needs and strategies into the Child’s IDP, or their one page profile, if more appropriate.
50. Additionally, the LA Principal Educational Psychologist considered the Child would continue to benefit from the advice and support of the LA Schools Outreach Service (Behaviour and ASD) [p.1373/G70]. The Tribunal recommend the parties give renewed consideration to this resource.



## The Tribunal's Decision and Reasons

### Issues in Dispute in the Working Document of November 2023

51. There is a pervasive dispute between the parties as to whether the Child's needs are primarily linked to ASD as the Parent submits or, whether they are linked to trauma, as the LA Principal Educational Psychologist for the LA submits.
52. The LA Principal Educational Psychologist accepts the ASD diagnosis made by the Neurodevelopmental Advanced Nurse but, considers their primary educational needs are social emotional and behavioural. They assert that their problematic behaviour in school is consistent with children who have attachment difficulties. Their low self-esteem is a barrier to their learning [p.1372/G69]. The Neurodevelopmental Advanced Nurse reports that the Child presents with "insecure emotional attachment", and it is important that they have "consistency and support from the adults in their life." [p.54].
53. The Tribunal concludes that there is an inter-relationship of both factors in the Child's ALN and the ALP required to meet those identified needs. Therefore, the Tribunal does not consider it necessary to determine the primacy of either factor and has taken both into account. The Tribunal's proper focus is to identify the ALN that the Child has and the provision that is necessary to meet them, whatever the origin of those needs.
54. The position of the parties in relation to each of these areas of dispute, together with specific evidence that the Tribunal has taken into account is set out in relation to each issue. The ALN identified and the ALP to meet the ALN are set out as bullet points under the relevant subheading of the IDP, where the Tribunal considers them to be most appropriately placed.
55. The reports referred to in this Tribunal's Decision and Reasons section are:
  - The Advanced Neurodevelopmental Nurse dated January 2023 [p.112 and p.1251]
  - Head teacher at the Primary School submitted a witness statement which is p.1490/K58 and an update witness statement dated November 2023 which is at p.9 of the LA's Addendum Case Statement
  - The Head of the Pupil Referral Unit is the Head Teacher at the Pupil Referral Unit, they submitted a witness statement dated September which is at p.1433/K, additionally, the Pupil Referral Unit gave an update as part of the LA's Addendum Case Statement. The Head of the Pupil Referral Unit gave oral evidence.
  - The LA Educational Psychologist, whose report is at page 1363 of the bundle and is dated September 2023 and who gave oral evidence.

### *Section 2A, Cognition and Learning*

56. The LA states that the Child is “able to listen to multi step instructions and carry out what is asked” of them. The Parent says that this is not the case, the Child needs support to stay on task, they refer to their experience of being told by the Primary School that the Child has not completed work.
57. The Tribunal took into account the agreement between the parties that the Child’s requires the support of a 1 to 1 TA. We considered the evidence of the LA Principal Educational Psychologist, that consistent with the Child’s profile and presentation, there is a hyper focus on the things that they are interested in and barriers to engagement in activities that they are less interested in or feels less able in. The Parent and the LA Principal Educational Psychologist agree that areas of strength are maths and visual spatial skills. The LA Principal Educational Psychologist described the Child as potentially having a “gift” for subjects such as Design and Technology because of their visual spatial ability.
58. The Primary School Head teacher [§8] reports that the Child struggles to produce written work, can become frustrated and scribble out or rip up their work. This frustration can rapidly escalate into aggressive behaviour which has led to exclusions in the past. The Parent agreed with the LA Principal Educational Psychologist that areas of challenge for the Child are creative writing and literacy.
59. 2 members of staff at the Pupil Referral Unit say at p.32 of the addendum LA Case Statement that the Child can struggle to start new, or challenging areas of work and that they are better able to do this if there is a supportive member of staff nearby.
60. The Tribunal is persuaded by the evidence of the LA Principal Educational Psychologist and the Pupil Referral Unit that the Child has a need for additional support when they are dysregulated or faced with a task they find challenging. The Tribunal accepts their conclusions that the Child’s need for support is triggered by dysregulation which can be a barrier to learning for the Child. Therefore, the Tribunal has identified the following ALN,
  - The Child has a need for additional support to access learning when they are dysregulated and/or when tasked with activities that are challenging or, not of interest to them.
  - The Child experiences low self-esteem and self-efficacy, which can present as a barrier to their learning.

### *Section 2B.2, Cognition and Learning, ALP*

- The Child is to continue to have the support of a 1 to 1 TA to help them to remain on task and to manage emotional dysregulation.
- The Child is to have access to separate physical safe spaces at the Primary

School and the Pupil Referral Unit with the support of the Child's TA to help them to regulate their emotions.

61. The Parent submitted the Child has difficulty following multi step instructions. They have difficulty "staying on task". They considered the curriculum for the Child should be bespoke and modified. The LA disagreed; they considered the Child was benefitting from adjustments which enabled them to more successfully access the national curriculum.
62. The Advanced Neurodevelopmental Nurse, [p41] assessed the Child to be of average academic ability. The LA Principal Educational Psychologist undertook a cognitive assessment of the Child p.1371/G68. They concluded the Child has cognitive ability in the "above average range". They assessed their visual spatial skills as "exceptional". The Head of the Pupil Referral Unit confirmed at the hearing the Child follows the national curriculum.
63. An update Report was collated by the Child's class teachers dated Autumn 2023 and at page 31 of the LA Addendum Case Statement. They report the Child finds it challenging to start new, unfamiliar areas of work, but they will usually complete the work. "They will work better when there is a staff member nearby, providing reassurance once they have had time to process what they need to do, they will accept support and complete the task successfully."
64. The Tribunal accepts the evidence of the LA Principal Educational Psychologist and the Head of the Pupil Referral Unit as to the Child's cognitive ability to follow the national curriculum and that they are currently accessing a full curriculum. We accept the collated evidence of the Child's teachers that they usually complete work when there is discreet support to hand.
65. We also accept the submission of the Parent that how successfully they access the curriculum can vary, which accords with evidence of the Pupil Referral Unit and the Primary School Head teacher's report of the Child spoiling their work or refusing to undertake a task when dysregulated.
66. We accept the Primary School Head teacher's updated evidence that the Child is now better able to stay on task with the support of a TA, as and when they choose to engage their attention. The Head of the Pupil Referral Unit makes similar observations, that they like to be independent and to have support when they ask for it or, when the TA notices they are becoming dysregulated [p.1439/K7]. The Parent sought a 10 minute target for the Child to stay in a lesson with the rest of their group. The Tribunal considers this target to be more of an outcome than a need or a provision, the request is beyond its jurisdiction and therefore, we refuse the request.
67. We conclude that whilst the Child does need support to access the curriculum, because they are able to access it, they do not have an additional learning need for a bespoke and modified curriculum.

## *Section 2A Communication and Interaction*

68. The LA Principal Educational Psychologist considers that the Child would benefit from the explicit teaching and modelling of friendship skills and opportunities to practise these skills in a structured way [p.1373/G70]
69. The Primary School Head teacher reports the Child is desperate to fit in with their peers and to be able to play with them, but they struggle to make and maintain friendships. They try very hard but find social engagement very challenging at times.
70. The Primary School Head teacher reports developments in the Child's behaviour in recent months. They have been observed to take part in paired and group activities and this term has shown that they have improved their ability to regulate their emotions, especially during play and social times. They are better able to explain what has upset them and how it made them feel in "a very mature way". [p.32] They have shown that they can listen to the views of others and "agree to disagree" and to accept apologies.
71. The Head of the Pupil Referral Unit reports the Child has learned strategies to correct their manner and reply appropriately, towards the end of the school year 2022/23 they achieved multiple "green weeks" [p.1441/K9] where they have worked well and their behaviour has been appropriate. The Head of the Pupil Referral Unit reflects the Child has started to trust the teacher who leads their individual child based emotional literacy sessions, or "Th'Inc". They will now talk more about school and their personal life; the weekly sessions have become more important to them and they are more open to finding solutions to their challenges.
72. The Tribunal heard from the Head of the Pupil Referral Unit that the Child is now able to participate in challenge activities which take place at the start of their sessions there. Previously, the Child would have found participating in such unstructured and busy activities with their peers very hard to tolerate. The Tribunal was persuaded by the Head of the Pupil Referral Unit's evidence that such activities show the Child's ability to regulate their emotions, manage their perfectionism and develop their self-esteem is improving.
73. The Tribunal concludes from the evidence referred to in this subsection that the Child is making progress with the support of the Pupil Referral Unit to improve their communication skills and understanding of the triggers that cause them to become dysregulated. The interventions have helped them to have a better understanding of when a situation is at risk of escalating, the alternative ways of communicating and behaving that are open to them. The Tribunal accepts the evidence of the Head of the Pupil Referral Unit and the LA Principal Educational Psychologist that they will need further support to develop friendship skills and make social interaction less challenging for them and for this reason consider the Child has an ALN as follows,
  - The Child needs to further develop their skills in social interaction and the development and maintenance of friendships.

## *Section 2B.2 Communication and Interaction, ALP*

- The Child is to continue to have access to work and support with their social skills, making and maintaining friendships.

## Section 2A, Behavioural, Social and Emotional Development

74. The Parent disputes the effectiveness of the strategies used at the Pupil Referral Unit to help the Child to regulate their behaviour, in part because they are still experiencing exclusions at the Primary School and also because they are concerned that the provision is not sufficiently weighted towards the Child's autism diagnosis. The LA disagree, they say the Child is making progress with the Trauma informed practice at the Pupil Referral Unit. Both parties accept that points of change or transition are particularly difficult for the Child and that they will need additional support to transition to high school
75. The Head of the Pupil Referral Unit says in their witness statement the Pupil Referral Unit is able to meet the need of a range of learners with a range of Social, Emotional and behavioural difficulties, the curriculum is based on a Trauma-Informed practice. The learners that attend the Pupil Referral Unit are often at risk of permanent exclusion. The interventions are designed to help learners to recognise the role that they can play to improve the experience in their mainstream school. The Pupil Referral Unit works closely with the ASD outreach team. Learners attend part time to help them to maintain a connection with their mainstream school, which is considered essential for their return to full time mainstream school.
76. The Head of the Pupil Referral Unit says when it is particularly difficult to regulate the Child's emotions and behaviour, they need support from their TA to remove themselves from the general classroom environment. They need to be taken to a quiet, safe space to help them to regulate themselves and re-engage with their learning. The Primary School Head teacher also reports that removing themselves from the classroom can be a helpful strategy for the Child to enable them to feel calmer and to rejoin the class in a more settled state. We accept the Parent's evidence that the Child needs to have an element of choice in how they do things, for example how they present their work, in an exercise book or on loose paper.
77. We accept the evidence from the Child's teachers and the Parent that the Child has benefitted from being able to withdraw to a quieter physical "safe space" which helps them to regulate their emotions. We have accepted that emotional dysregulation can be a barrier to learning for the Child and for this reason conclude that they have an additional learning need for a "safe space" to regulate themselves to be able to engage with learning again. The Child has the following ALN,
  - The Child needs support to withdraw to a physical safe space when they are becoming dysregulated.

78. The Tribunal has heard evidence about the Child's need for support with everyday changes, for example, changing from one task to another and from one environment to another, for example from the Primary School to the Pupil Referral Unit. We have heard that they are working hard with the teacher to process changes to their home life and to understand how their diagnosis affects them.
79. We are persuaded by the Head of the Pupil Referral Unit's oral evidence that having a routine to meet the Child at the start of a session and to help them to transition between sessions is an important factor in the Child feeling settled and ready to learn. This provision also gives the Child a sense of control and choice about what happens during the school day.
80. The Head of the Pupil Referral Unit reports the Child finds the use of a visual timetable at the Primary School embarrassing, as they do not want to be seen as different to everyone else [p.1441/K9]. The Tribunal accepts the evidence of the LA Principal Educational Psychologist and the Pupil Referral Unit that the Child needs predictability and routine. We also take into account the Child's views that they just want to be like everyone else and finds being treated differently embarrassing, because the Child has a need for a visual timetable, but may find using it socially difficult, we consider their additional learning need to be to have access to a visual timetable.
81. We have also accepted evidence that the Child has a heightened need for control, which can be addressed by an element of choice. Because the Child can get frustrated by making mistakes and by appearing to be different to their peers, we consider that they have additional learning needs for an element of choice as to how they plan and present their work. The Tribunal concludes the Child has the following ALN,
- The Child needs predictability and routine and to know what is happening next in their school day.
  - The Child has a heightened need for control, which may be attributable to their diagnosis of ASD, they need some choice in how they present their work.
  - The Child needs support to manage difficulties they can experience in transitioning from one educational setting to another at the start of a session.

*Section 2B.2, Behavioural, Social and Emotional Development ALP*

- The Child will be provided with a "meet and greet" when they arrive at a setting to help them to adjust to that change.
- The Child will be offered a choice of completing written work in an exercise book or on loose paper which can later be inserted into an exercise book.
- The Child is to have access to a visual timetable.

82. The LA Principal Educational Psychologist considers the Child very reluctant to talk about their feelings and they find it hard to manage strong emotions. The Child needs support to regulate their feelings and to feel “psychologically safe” and to have a sense of belonging at school. The LA Principal Educational Psychologist recommends the Child have a “very carefully planned enhanced transition” [p.1373/G70].
83. The Tribunal heard oral evidence from the Head of the Pupil Referral Unit that they are keen at the Pupil Referral Unit to help the Child with their transition to high school and to start that work as early as is meaningful for the Child. With other learners, the Pupil Referral Unit have arranged for them to have access to an iPad to take pictures of the school and support to get them involved in activities that they enjoy, in the Child’s case this could be sport and coding. The Head of the Pupil Referral Unit explained the transition work would start at the Pupil Referral Unit and gradually move to focus on the high school.
84. We accept the evidence of their teachers and the LA Principal Educational Psychologist that they need help with change. The LA expressed its support in principle for an early transition plan, potentially starting in January 2024. We have given weight to the Child’s voice; they want to know what is going to happen. They are worried about making a choice and is worried about being different. The Head of the Pupil Referral Unit helpfully provided the Tribunal with an early draft transition plan for the Child which the Tribunal hopes can be the basis of further work on transition planning.
85. The Tribunal concludes the Child has the following ALN,
- The Child needs an extended period of transition planning to prepare them for high school. They have a need to be involved in the planning process which is to include getting to know a range of staff who can support them.

*Section 2B.2, Behavioural, Social and Emotional Development ALP*

- The Child is to have an extended period of transition planning for high school starting at the latest after the February half term. The transition plan is to include visits to the school and inclusion in activities that the Child enjoys such as sport and coding.
86. The Parent has asked that the LA specify the TA that will support the Child with transition to high school, they consider that this will provide the Child with some of the certainty that they need. The LA say they should not be bound to provide a particular person, whether that person would be available is not within their control, and they also refer to the evidence from the Pupil Referral Unit and the Primary School that the Child likes to be independent, they can build trust with a number of people and this relationship building is also an important factor in their preparation. The Tribunal is persuaded by the LA’s submissions and agrees that making a legally enforceable requirement that a particular person work with the Child, is neither appropriate nor within the powers of the Tribunal to order.

## Section 2A , Sensory, Physical and Medical Needs

87. The Parent considers the Child to have a sensory need for fidget objects. The LA feel they cannot commit to the provision of such objects for the Child in settings other than the Pupil Referral Unit.
88. The LA Principal Educational Psychologist noted when they observed the Child, they often had items in their hands when they were in class, which they fiddled with during the lesson. They say at p.1371/G68 “The object must have a regulating effect on the Child or may help them concentrate, and therefore should be included in “What works for the Child in class”.
89. The Head of the Pupil Referral Unit states learners at the Pupil Referral Unit have access to fidget resources, and the Child can choose to sit on a wobble stool instead of a standard classroom chair. [p.1439/K7]. Because the Child accesses suitable sensory tools at the Pupil Referral Unit, such as fidget devices at the Pupil Referral Unit and they help them to regulate themselves, the Tribunal concludes the Child has the following ALN,
  - The Child has sensory needs, which affect their ability to focus.

## *Section 2B.2, Sensory, Physical and Medical Needs, ALP*

- The Child is to have access to a wobble chair or stool. They are to have access to suitable fidget objects, sourced from home.

## Section 2D Appropriate placement

90. In May 2023, the Advanced Neurodevelopmental Nurse wrote a follow up opinion on the type of school environment that may be suitable for the Child. The Child needs to be in an environment where they know what is going to happen next, those supporting them need to be aware of signs of stress in them and to scale back demands at that time.
91. “Teaching assistants can be particularly helpful as they can step back when the child is coping well but be available nearby to intervene if the child becomes anxious....as the Child gets older it is important to encourage them to identify their own stress levels...make sure there is space in the classroom or school where they can go when they need to calm.” [p.1357]
92. The Advanced Neurodevelopmental Nurse’s assessment of the Child was that the Child would “struggle significantly to access education in a mainstream high school setting”. They considered they would benefit from specialist provision in a setting that is smaller with highly specialised teaching staff. [p.1357]
93. The Advanced Neurodevelopmental Nurse was not a witness at the hearing and therefore, their evidence has not been tested orally. Therefore, the Tribunal gives less weight to their evidence than that of the LA Principal Educational Psychologist which is more recent, and which was tested orally at the hearing.



94. The Tribunal accepts the oral evidence of the Parent that the Child's reports of the Primary School and the Pupil Referral Unit are different when relayed to the Parent. The Tribunal accepts that the Parent experiences more of the Child's "unmasking" (when they return home at the end of the day) than the professionals do.
95. The Parent told the Tribunal that the Child "hates" the Primary School and the Pupil Referral Unit. The Tribunal accepts that this is a true account of what can be the Child's very forceful views. However, the Tribunal gives greater weight to the evidence from the Head of the Pupil Referral Unit as to the progress that the Child has made as an indicator of the suitability of the current arrangement.
96. The Tribunal accepts the agreement of the parties that the Primary School and the Pupil Referral Unit are suitable placements for the Child for the remainder of Y6. We accept the agreement of the parties and the evidence of the LA Principal Educational Psychologist that extended transition planning to high school will be an important factor for the Child's transition to high school and to Y7.
97. The Tribunal understands the Parent's wish for a secure educational future for the Child and their concerns as to what may happen if they are excluded from the High School. However, we accept the LA's submission that the Tribunal must decide the appeal on the evidence before it. We cannot prejudge the consequences of events that have not happened. We are unable to order provision at a "back up school".
98. The Tribunal has had due regard to the wishes and feelings of the Child's parents, who for different reasons accept the current arrangement and have stated the High School is their preference for high school, in accordance with s.9 of the Education Act 1996. We have also taken into account the Child's wishes to have certainty and as far as possible to be treated in the same way as their peers.
99. The Tribunal has decided on the issues in dispute for the remainder of Y6 which include provision for transition to high school. We note the LA's willingness to commit to an extended period of transition for the Child and their acknowledgement that they can direct the High School to take the Child in September 2024, should the Child not be allocated a place according to parental preference in March.

## **Order**

The Appeal is allowed and the Individual Development Plan for the Child is amended in accordance with the IDP attached to this Decision.

**Dated December 2023**