



DECISION

Date of Birth: 2011
Appeal By: The Parents
Against Decision of: The Local Authority
Date of Hearing: 2024

Persons Present:

The Parent	<i>Parent</i>
The Parent	<i>Parent</i>
Representative	<i>Parent Representative, Counsel</i>
Independent Speech & Language Therapist	<i>Parental Witness 1</i>
Independent Occupational Therapist	<i>Parental Witness 2</i>
Representative	<i>LA Legal Representative, Solicitor</i>
LA Representative	<i>LA Representative</i>
Deputy Head of Speech & Language Therapy at the Health Board	<i>LA Witness 1</i>
Lead Teacher at the Specialist Resource Base, School A	<i>LA Witness 2</i>

Appeal

1. The appeal is brought by the parents of the Child, under section 70(2)(d) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (the Act) against the decision of The Local Authority (the Respondents) regarding the additional learning provision provided for the Child within the Child's Local Authority maintained Individual Development Plan (IDP).

Preliminary

2. The appeal was initially made under the following grounds of appeal as set out in section 70(2) of the Act:
 - (c) the description of a person's additional learning needs in an individual development plan

(d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh)

(f) the school named in an individual development plan for the purpose of section 48;

3. Prior to the Tribunal hearing the parties had reached agreement on grounds (c) and (f) in that, it has been agreed that the school named in the IDP is the Child's current school, School A and that the Child's additional learning needs (ALN) are severe and complex and that these needs arise from the interaction between:

- Autism and associated difficulty with social communication, interaction and social cognition and affect.
- Severely delayed learning and language difficulties
- Processing difficulties
- Weak fine motor skills
- Delayed self-care and independence skills

4. The matter for consideration before the Tribunal relates to the additional learning provision that the Child requires in order to meet their additional learning needs (as set out above). On consideration of the working document version 9, there are four areas of dispute in this case, namely the number of hours to be provided to the Child of speech and language therapy (S<) and how the hours are made up between direct and indirect therapy, whether the Child should be provided with music therapy (MT) and the number of hours the Child will receive one to one support in targeted learning and therapeutic activities.

Facts

5. The Child was born in 2011 making them 12 years at the time of the appeal.

6. In November 2015, the Child was diagnosed with Autism Spectrum Disorder (ASD), learning difficulties, hypermobility and sensory issues.

7. Since September 2023, the Child has been a registered pupil at School A.

8. In September 2023 the Appellants submitted an appeal to the Tribunal against the decision of the LA dated July 2023. The initial appeal was in respect of the description of the Child's additional learning needs, the school named in the IDP and also the provision set out in the IDP.

As stated above only the latter, fell to the Tribunal to determine, as the other appeal grounds have been resolved between the parties.

9. On appeal the Tribunal may either dismiss the appeal or direct the Respondent LA to amend the IDP.

Tribunal's Conclusions with Reasons

10. We have carefully considered all the written evidence and submissions presented to the Tribunal. We have also considered the relevant statutory provisions and the Additional Learning Needs Code for Wales 2021 (the Code). We conclude as follows.

11. 'Additional learning needs' are defined as follows by section 2 of the Act:

(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 other of the same age or (b) has a disability for the purposes of the Equality Act 2010 which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions or in the further education sector.

12. Under the Code the first test to be applied is does the Child have ALN. As stated in paragraph 3 the Child's ALN is no longer in dispute.

13. Taking into account the Child's ALN, we had to consider what additional provision should be provided to meet Th Child's needs.

14. 'Additional learning provision' is defined in section 3 of the Act:

(1) "Additional learning provision" for a person aged three or over means educational or training provision that is additional to, or different from that made generally for others of the same age in:

- (a) mainstream maintained schools in Wales
- (b) mainstream institutions in the further education sector in Wales, or
- (c) places in Wales at which nursery education is provided

Speech and Language Therapy

15. Both parties accept that the Child should receive speech and language therapy (S<): what is in dispute is the number of hours that should be provided.
16. The Appellants' case is that the Child should receive 9 hours of indirect S< per academic year and 9 hours of direct S< (p.32 & 33 of IDP working document). They produced a written report dated January 2024, by parental Witness 1 who is an Independent Speech and Language Therapist (p.76-93 of the bundle), in addition they also gave oral evidence to the Tribunal.
17. In their evidence parental Witness 1 advised the Tribunal that they had undertaken an assessment of the Child at School A in November 2023. They commented that the School setting was excellent, and that the Child's progression is reflective of the hard work of the staff at the school.
18. In respect of the number of hours that parental Witness 1 was recommending for S<, they described them as 'modest' and that they would have concerns if the Child were to receive less than 18 hours of therapy as in their opinion the Child has a 'complex and disordered profile of significant communication, social, sensory, emotional and learning/cognitive needs'.
19. In their evidence they stated that the Child was discharged from the NHS S< service in September 2020 and despite them GP making a referral in April 2022, the referral was declined. It was their view that the Child's needs are complex and that given there has been little input by way of S< that the Child would require the 18 hours of therapy. They stated in their report, that 'Given the complexity and severity of the Child's communication and interaction needs, I have marked professional concerns about the lack of Speech and Language Therapy input over the past 3 years'. (P.90 of the bundle)
20. The Respondents' case is that the Child should receive a minimum of 15.5 hours of S< over 3 school terms. They base this on evidence provided by way of a draft report dated February 2024 (P.147-153 of the bundle), written by an Advanced Speech and Language Specialist for Health Board.
21. As the person who produced this report was unavailable to give evidence at the Hearing, LA Witness 1, who is the Deputy Head of Speech & Language Therapy at Health Board, attended on their behalf.
22. The report advises that the Child was discharged from the service in September 2020 as it was felt at that time their communication needs could be appropriately supported by parents and school, that the GP

referral in 2022 was not accepted as it lacked sufficient information, and that they had not received any further information regarding the Child, until the referral by LA Witness 2 (Lead Teacher at School A specialist resource base) in October 2023.

23. The report writer states that they carried out an assessment of the Child in January 2024 at School A. They state:

'The Child was observed responding positively to Intensive Interaction. The staff member was copying the Child's sounds as they were playing with the fan and this continued back and forth for a short period. The Child made some vocalisations and appeared to copy the intonation of the staff member when they said, "Time for songs."

'The Child is described as non-speaking. The Child communicates their needs through physical gestures, facial expressions and vocalisations. They rely on adults to interpret the messages they are sending... The Child is able to follow routine, short instructions that are within context. They were observed to require some additional guidance to transition to an adult-led task'

24. Within the report they have set out the 'next steps' for the Child within a table, which describes both direct and indirect therapy.

25. In their evidence LA Witness 1, deputy head of SALT at Health Board, stated that there is a degree of flexibility with the S< therapy, depending on the Child's needs and preference. They agreed that the therapy should be over the 3 school terms and that the number of hours is set as a minimum. That the therapy is as set out in the report (p.151 & 152 of the bundle), but that it's flexible and there are recommended time frames within the table.

26. They were questioned about the number of hours and how they are made up, it was put to them that 18 hours is not a lot more to ask given their recommendation was for 15 and half hours. They stated that this was a minimum and that they would follow the Child's lead based on user need modelling.

27. Counsel took LA Witness 1 through the draft report of February 2024 where the original number of hours being offered was 7 and half, counsel questioned why there had been such a dramatic increase without explanation. They advised that it was a draft report and subject to change and that the clinical element is the same in both reports, they confirmed that the draft had been shared with the parents and the school.

28. During submissions, the Appellants Counsel acknowledged that the issues before the Tribunal are narrow; that the Respondents' assessment of 15 and half hours is not agreed; that there is a stark difference in the number of hours between the draft report and the final

report; that the provision suggested by the Respondent is not specific as is required under the legislation and Code; and that the direct and indirect therapy should be split 50/50 as stated in the evidence of parental Witness 1 (independent SALT). Counsel submitted that the Respondent does not specify the hours of direct/indirect, which is something that they must do.

29. Counsel further submitted that parental Witness 1 was clear in their evidence that 18 hours was modest and that there was nothing to undermine the evidence that they gave. Counsel stated that LA Witness 1s' evidence was limited as they had never met the Child. There is no explanation as to why the hours have gone from 7 and half to 15 and half in the final report.
30. Counsel invited the Tribunal to accept parental Witness 1's evidence. They highlighted that the Child has not received S< since 2020 and that the attempts by the GP in 2022 to refer the Child were rejected; it was the school who made the last referral based on their complex needs.
31. The Solicitor for the Respondent, in their submissions stated that direct and indirect therapy can be flexible as it depends on engagement and concentration. They stated that the IDP should be specific but not rigid.
32. They submitted that LA Witness 1, Deputy Head of SALT at Health Board had emphasised that the draft report was just a draft and that when you look at the draft and final report there is not a huge difference between them.

Decision

33. That the Child be provided with a minimum of 15 and half hours of Speech and Language Therapy as set out in the table contained on pages 5 & 6 of the report of February 2024.

Reasons

34. The Tribunal has read and listened carefully to all the evidence placed before it. Whilst we accept the professional opinion of parental Witness 1, on balance, we are more persuaded by the evidence of LA Witness 1 and the report of the health board in respect of the number of hours of S< and how this should be made up between direct and indirect therapy. We agree that direct and indirect therapy needs to have a degree of flexibility, depending on the needs of the Child.
35. The Code at para 23.34 states that where relevant, the IDP should include details of how regularly the ALP is to be required. Para 23.37 states that the ALP should be 'detailed, specific and quantifiable'. It is

our view that the provision as set out by the report is specific enough to meet with the requirements of the Code. We order that the table be extracted from pages 5 & 6 of the report and be attached as an Appendix to the IDP.

36. We are satisfied that 15 and half hours are the minimum hours to be provided to the Child, but as LA Witness 1 stated in their evidence these can be increased depending on the Child's needs. To give some reassurance to the Appellants, who are of course the Child's parents, we order a slight amendment to the paragraph with in the IDP (page 34 of working doc. 10), as follows:

'As indicated in the table contained in Appendix ..., The Child will receive a combination of direct and indirect Speech and Language Therapy. This will be for a minimum of 15.5 hours over 3 school terms. The Child may receive more hours of therapy depending on their response to the episode of care and the clinician's judgement. This will be reviewed at the termly MDT meeting.'

Music Therapy

37. It is the Appellants' case that the Child should have the provision of music therapy within the Child's IDP. There was no report from a music therapist before the Tribunal. The Appellants relied on the report of parental Witness 1 (SALT) and the report dated January 2024, from an Educational Psychologist (p.113-146 of the bundle)
38. Parental Witness 1 gave evidence to the Tribunal, they advised that they are not a qualified music therapist, but has experience of working alongside a music therapist when working for the NHS. They advised that they felt strongly that the Child would benefit from this type of holistic therapy, as it can bring about positive changes and improve life skills and communication. They accepted that an assessment would need to be undertaken by a qualified therapist to determine the Child's needs and that this should be explored as part of provision.
39. They accepted that there was a place for both music therapy and the current music activities that were being practiced in school.
40. The parent advised the Tribunal that the Child had previously attended at Music Centre, for 6/8 weeks of music therapy.
41. LA Witness 2, Lead Teacher, was asked whether the school can access Music Centre, which they confirmed that they could as an additional paid resource. They confirmed that the school have a fixed term music provision starting shortly.
42. Parental Witness 1, independent SALT, was challenged by the Solicitor on behalf of the Respondent, stating that there was no rationale for the therapy. They disagreed. They again accepted that

the therapy desires and goals were outside their remit, but that having observed the Child and their engagement with music, considered the therapy would be key.

43. On behalf of the Respondent, LA Witness 2, deputy head of SALT at Health Board, gave evidence quoting 2013 NICE Guidelines for the health and social care sector, regarding music therapy and the effectiveness of it. They stated that they were not disputing the fact that the Child loves music. They were challenged on the use of the guidelines by Counsel for the Appellant.
44. Parental Witness 1, independent SALT, was asked about the use of the guidelines, and they stated that in their opinion the decision should not be based on guidelines but the needs of the Child.
45. LA Witness 2, lead teacher at specialist resource base, gave evidence to the Tribunal around the daily music activities within the school, they explained that they have a welcome song in the morning, where all pupils sing to each other. That they use music throughout the day as an indication of the time of day, such as break/lunch time. That they will sit around the mat and use things like 'shaky eggs' and that music is also played in the sensory room.
46. In their submissions for the Appellants, Counsel stated that the Child enjoys music and engages proactively. LA Witness 2 in their evidence states that there are music activities for transition within the school day. They were not suggesting that that these should cease, but that therapy was also required. They submitted that the evidence comes from more than one source, both an Educational Psychologist and parental Witness 1 - an independent speech & language therapist, as in their respective reports they both mention music therapy.
47. The Child has engaged with music therapy in the past and this can be given at the school as an additional 'buy in'. They submitted that the Child would derive benefit from this type of therapy.
48. In respect of the NICE guidelines, they stated that these had not been produced. They stated that music therapy can qualify as special provision.
49. The Solicitor for the Appellant submitted that there was no educational need for music therapy and that no evidence had been produced to support this request. That the music activity within the school is sufficient.

Decision

50. That music therapy does not form part of the additional learning provision.

Reasons

51. We have considered all the written and oral evidence regarding whether music therapy should be provided as an additional learning provision for the Child. There is no doubt that the Child enjoys music. This was reaffirmed by the parents nodding in agreement when it was raised during the hearing and also other reports confirming that the Child has enjoyed a course of music therapy in the past. The Child appears to thrive during the music activities with school and actively engages with them.
52. We accept the evidence of parental Witness 1, Independent Speech & Language Therapist, but taken at its highest they were recommending that an assessment be carried out by a qualified music therapist. Whilst they could give their views having worked alongside a music therapist and also based on their assessment of the Child, they conceded that they could not advise on the detail of the therapy that the Child should receive.
53. We also accept the evidence of the Health Board report, but similarly to parental Witness 1, they are not a qualified music therapist.
54. Given there is no assessment or report from a qualified music therapist, we are unable to order that music therapy be an additional learning needs provision for the Child as we have no evidence before us to support this.

1:1 Support

55. It is the Appellants' case that the Child should receive 3 hours of daily targeted learning and therapeutic activities. They rely on the report of an Educational Psychologist and ask that weight be given to that evidence. On page 27 of their report (p.139 of the bundle), under the heading 'Cognition and Learning' they state that 'The Child needs direct adult support throughout the school day', 'The Child will require one to one support in targeted learning and therapeutic activities for 3 hours each learning day (15 hours each week)'
56. The Respondents' case is that the Child should receive a minimum of 2 hours of targeted learning and therapeutic activities, which is the number of hours that the Child currently receives.
57. The Respondent relies on LA Witness 2's (Lead Teacher at School A Resource Base) written and oral evidence. They gave evidence to the Tribunal advising that the Child currently receives 2 hours of 1:1. They said that during a 50 minute lesson, 20 minutes of that time is directed 1:1 work, and there is 2:1 small group work, for example a music circle, tray work etc. Time is used in lessons to explore relationships, independent work, and spending time with peers. It adds up to 2 hours per day. Their view is that the Child does not require 1:1 for 3 hours as

the 2 hours is sufficient so the Child can have independent time, as they enjoy being by themselves with music toys. This 'time out' allows them to refocus ready for the next task. They confirmed that self-care support is not included within the 2 hours of 1:1.

58. LA Witness 2 stated in their oral evidence that 2 hours 1:1 is sufficient to meet all of the Child's needs.

59. In their submissions, Counsel for the Appellant stated that in respect of LA Witness 2's evidence that it was difficult to assess how effective the 2 hours are as they are not what the Child reasonably requires, based on expert recommendation. The Counsel for the Appellant directed the Tribunal to the report at page 139 of the hearing bundle, submitting that the Tribunal can be satisfied that 3 hours 1:1 would be the minimum number of hours and that there was no rational for anything less.

60. The Solicitor for the Respondent submitted that LA Witness 2 (Lead Teacher) had provided written and oral evidence regarding the hours of 1:1 provided to The Child and that they believed that more than 2 hours would stifle the Child's independence, and that 2 hours was sufficient and meeting the Child's needs. The Solicitor for the Respondent further submitted that the writer of the draft report had spent one and half hours with the Child, where as LA Witness 2 knows the Child and has greater knowledge of their needs.

Decision

61. The Child is to receive 1:1 support in targeted learning and therapeutic activities for a minimum of 2 hours each learning day.

Reasons

62. Having read and heard the oral evidence on this issue, as summarised above, whilst we acknowledge the professional opinion, we attach more weight to the evidence of LA Witness 2, lead teacher. We agree with the submissions made by LA solicitor on behalf of the Respondent, in that the LA Witness 2 sees the Child within the school class. The LA Witness 2 has personal knowledge of the Child and the Child's needs. In their opinion 3 hours would be too much for the Child, as the Child enjoys and benefits from their independent time, but went even further by stating that independent time was needed by the Child to allow the Child to refocus in readiness for the next task.

63. We note that the provision is for 1:1 support for a minimum of 2 hours, and we are satisfied that these hours could be increased if there was a need.

Order

64. It is ordered:

1. That the Respondent amend the wording on the IDP, (p.34 of the working document) to state:

'As indicated in the table contained in Appendix ..., The Child will receive a combination of direct and indirect Speech and Language Therapy. This will be for a minimum of 15.5 hours over 3 school terms. The Child may receive more hours of therapy depending on their response to the episode of care and the clinician's judgement. This will be reviewed at the termly MDT meeting'

2. That the table be extracted from pages 5 & 6 of the report of the Health Board and be attached as an Appendix to the IDP.
3. That music therapy does not form part of the Child's additional learning provision.
4. That the Child is to receive 1:1 support in targeted learning and therapeutic activities for a minimum of 2 hours each learning day.

Dated March 2024